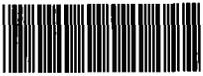


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UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

No. 82-1672-S

ANNE ANDERSON, et al.,

Plaintiffs,

VS.

CRYOVAC, DIVISION OF W. R. GRACE & CO.;
W. R. GRACE & CO.; JOHN J. RILEY COMPANY,
DIVISION OF BEATRICE FOODS CO.; BEATRICE
FOODS CO.,

Defendants.

VOLUME III

DEPOSITION of THOMAS BARBAS,
taken pursuant to Notice according to Federal
Rules of Civil Procedure, before Maureen J.
Manzi, Certified Shorthand Reporter and Notary
Public within and for the Commonwealth of
Massachusetts, at the Law Offices of
Schlichtmann, Conway & Crowley, 171 Milk
Street, Boston, Massachusetts, on Thursday,
June 27, 1985, commencing at 10:25 a.m.

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APPEARANCES:

SCHLICHTMANN, CONWAY & CROWLEY
By: Jan Schlichtmann, Esquire
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Boston, Massachusetts 02109
On behalf of the Plaintiffs

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On behalf of the Plaintiffs

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On behalf of Thomas Barbas

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On behalf of W. R. Grace & Company

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Boston, Massachusetts 02109
On behalf of Beatrice Food Company

I N D E X

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WITNESS

PAGE

THOMAS BARBAS

Examination by Mr. Schlictman

6

E X H I B I T S

NO.

PAGE

2 Photograph dated 03/15/74.

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3 Photograph dated 10/07/75.

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4 Photograph dated 03/26/66.

122

5 Photograph dated 04/11/75.

123

STIPULATIONS

1
2 MR. SCHLICTMANN: Same
3 stipulations.

4 MR. CHEESEMAN: For Terry's
5 benefit, the stipulations have been that the
6 objections and motions to strike, except as to
7 the form of the question, are being reserved
8 until trial. The deposition may be signed
9 under the penalties of perjury. The filing of
10 the deposition is waived.

11 MR. SEGAL: Signed by any
12 notary, though.

13 MR. CHEESEMAN: Well, under the
14 penalties of perjury.

15 MR. SCHLICTMANN: You don't
16 even need a notary, just under the pains and
17 penalties are fine.

18 MR. CHEESEMAN: Is that
19 agreeable to the parties?

20 MR. SCHLICTMANN: Yes

PROCEEDINGS

21
22 MR. CHEESEMAN: May I make a
23 statement?

24 MR. SCHLICTMANN: Yes.

1 MR. CHEESEMAN: I learned last
2 night that a couple of events may happen
3 today, which if they do happen, would require
4 me to suspend the deposition before it's
5 done.

6 As I mentioned to you sometime
7 ago, Jan, I've recently been appointed Special
8 Assistant Attorney General to act as special
9 litigation counsel for the Massachusetts Water
10 Resources Authority in connection with the
11 cleanup of Boston Harbor. And I've learned
12 that there may be a meeting today in Frank
13 Belloti's office between Bill Weld and Tom
14 Kiley at which my presence will be required.
15 And if that comes about, I'll have to ask
16 everyone to suspend with me, perhaps only for
17 a period of time, depending on what time of
18 day this happens.

19 I also learned late yesterday
20 afternoon that there is a hearing scheduled in
21 that litigation before Judge Mazoni at a
22 quarter of four this afternoon. Efforts are
23 underway right now to postpone that hearing,
24 but if that's not successful, I'll have to

1 leave here sometime after three in order to go
2 to that hearing.

3 MR. SCHLICTMANN: Okay.

4 MR. CHEESEMAN: I apologize in
5 advance for any inconvenience that may cause.

6 MR. SCHLICTMANN: Okay.

7 Are we all set?

8 THOMAS BARBAS, having been duly
9 sworn according to law, testified under oath
10 in answer to interrogatories as follows:

11 DIRECT EXAMINATION

12 BY MR. SCHLICTMANN:

13 Q. Mr. Barbas, you have been deposed two times
14 previously?

15 A. Yes.

16 Q. And both of those times you testified under
17 oath?

18 A. Yes.

19 Q. And since that time you've had a chance to
20 review your depositions?

21 A. Yes.

22 Q. And you've sent to your attorney changes to
23 your previous depositions?

24 A. Yes.

1 Q. And in those changes you provided additional
2 information?

3 A. Yes.

4 Q. And you've had time to think about the things
5 that were asked of you in your two previous
6 depositions?

7 A. Yes.

8 Q. And you had time to think about the things
9 since you've made these changes to your
10 deposition?

11 A. Yes.

12 Q. Mr. Barbas, would you please tell me what you
13 remember about your participating in the
14 pouring of drums into a pit on W. R. Grace's
15 property sometime in the past?

16 A. What was the question again?

17 Q. Yes.

18 Would you please tell me what
19 you remember about your participation in the
20 pouring of drums into a pit on W. R. Grace's
21 property sometime in the past?

22 A. That I was a participant.

23 Q. What do you remember about that?

24 A. There were approximately 10 to 20 barrels that

1 were brought to a trench or a buldoze
2 excavation by a truck, put on the ground and
3 that the contents of the barrels were poured
4 into the excavation.

5 Q. Um-hmm. Do you remember anything else?

6 A. At the completion of the pouring, the drums
7 were brought back to a fenced area, and the
8 barrels left shortly thereafter.

9 Q. Do you remember anything else?

10 A. In helping me at the time was Joe Meola.

11 MR. SEGAL: You should spell
12 that name.

13 MR. CHEESEMAN: I think it's
14 M-E-O-L-A.

15 A. And Frank Kelley.

16 Q. Do you remember anything else?

17 A. That's about it.

18 Q. When was this, Mr. Barbas?

19 A. The exact date, I'm not sure; but it was at
20 the completion of the second addition.

21 Q. And where was this; where did this take place
22 on the Grace property?

23 A. To the left of the warehouse building
24 approximately a hundred feet.

1 Q. When you say "to the left of the warehouse",
2 what do you mean by "the left"?

3 A. Facing it from the building, as I'm facing the
4 warehouse from the main building.

5 Q. Um-hmm. All right.

6 You say a hundred feet, which
7 way though, from the main building or from the
8 warehouse?

9 A. From the main building.

10 Q. A hundred feet from the main building?

11 A. Like the driveway, the paved area.

12 Q. Yes.

13 A. I'd say a hundred feet going towards Route
14 93.

15 Q. Now, that would put the warehouse on the right
16 of the area?

17 A. Yes.

18 MR. CHEESEMAN: Wait a minute.
19 Oh, okay. Never mind.

20 BY MR. SCHLICTMANN:

21 Q. As you're standing by the main building, the
22 warehouse would be on the right and the area
23 where you poured these drums would be
24 approximately a hundred feet from the main

1 building, and the warehouse would have been on
2 the right?

3 A. Yes. Facing, like -- I'm not too sure --
4 like, 93 from the building. Route 93.

5 Q. And where exactly, was there any physical --
6 Is there any geographical or geological
7 formation in that area that the dumping was
8 done, the pouring was done?

9 A. I'm not too sure I understand what you mean by
10 "geological".

11 Q. Was there a natural geological formation at
12 the area where you poured these drums?

13 MR. CHEESEMAN: Well, I object.

14 MR. SEGAL: I don't know what
15 you mean. You mean, was there a hole; is that
16 what you're saying?

17 MR. SCHLICTMANN: Well, you
18 said I want to know if there is any natural
19 formation into to which you poured these drums
20 as opposed to just being flat ground.

21 MR. SEGAL: The question is:
22 Was there a hole; is that what you're asking?

23 MR. SCHLICTMANN: Well, there
24 are man-made holes and there are nature holes.

1 MR. SEGAL: You understand the
2 question?

3 THE WITNESS: Yeah. Man-made
4 hole.

5 BY MR. SCHLICTMANN:

6 Q. Had there been a ditch there previously?

7 A. Previously, no. No.

8 Q. It was excavated for the purpose of pouring
9 drums?

10 MR. CHEESEMAN: Well, I
11 object. He doesn't necessarily know what the
12 purpose was.

13 MR. SCHLICTMANN: Well he can
14 tell me he doesn't know what the purpose is.

15 MR. SEGAL: Why don't you ask
16 him the question.

17 MR. SCHLICTMANN: I did, and
18 Mr. Cheeseman got involved.

19 THE WITNESS: Ask me the
20 question again.

21 BY MR. SCHLICTMANN:

22 Q. All right. What was the purpose of this
23 excavated hole?

24 MR. SEGAL: Well, do you know?

1 A. I don't know what the purpose of the hole
2 was.

3 Q. But that's the hole you poured the stuff into?

4 A. Yes.

5 Q. Now, Mr. Barbas, since your two depositions
6 you had a chance to think about the number of
7 drums that have been -- that you have seen
8 from time to time to the rear of the plant; is
9 that right?

10 A. Yes.

11 Q. Please tell me what you remember about drums
12 being stored to the rear of the plant.

13 MR. CHEESEMAN: The question's
14 awful general. Are you asking him now to
15 describe the number of drums that he observed?

16 MR. SCHLICTMANN: Whatever he
17 remembers about drums being placed to the rear
18 of the plant.

19 MR. SEGAL: Wait a minute. Can
20 we get a date?

21 MR. SCHLICTMANN: It's about
22 the time he worked for W. R. Grace.

23 MR. SEGAL: I mean, but it
24 could change. It could be one in 1961.

1 MR. SCHLICTMANN: That's true.

2 MR. SEGAL: I'd rather pin it
3 down to, you know, what was it in '61; what
4 was it in '68; did it change?

5 MR. SCHLICTMANN: I'm going to
6 be -- is it Terry, right?

7 MR. SEGAL: Yes.

8 MR. SCHLICTMANN: Jan. I'm
9 going to get very specific, but right now I
10 want to know what Mr. Barbas remembers about
11 it. He gave me additional information; he can
12 tell me the little he knows or the amount that
13 he knows.

14 MR. SEGAL: All right. What's
15 the question?

16 MR. SCHLICTMANN: All right.

17 MR. SEGAL: Let's try again.

18 BY MR. SCHLICTMANN:

19 Q. Since the time of your deposition -- you've
20 had two depositions -- you've had time to
21 think about the number of drums and places
22 where the drums were stored to the rear of the
23 plant during various time that you worked at
24 the Grace plant; is that right?

1 A. Yes.

2 Q. Please tell me what you remember about the
3 storing of drums to the rear of the plant?

4 MR. CHEESEMAN: Note my
5 objection to the form of the question.

6 MR. SEGAL: I join with that.
7 I really think you have to specify a time.

8 MR. SCHLICHTMANN: Well, I agree
9 with that; but I just want to, right now, know
10 what he remembers.

11 MR. SEGAL: Do you understand
12 the question? What he's saying is, you worked
13 at the plant from 1961 to the present. During
14 those 24 years, what's your recollection about
15 drums being stored to the rear of the plant?
16 He wants an overview, I think, of --

17 A. I think it was approximately 10 to 20 barrels
18 stored outside of a fenced-in area adjacent to
19 the paved road. Like a blacktop road.

20 Q. Do you remember anything else about it?

21 A. That's about it.

22 Q. All right.

23 Mr. Barbas, at some time in the
24 past you were questioned by Mr. Dick Stewart?

1 A. Yes.

2 Q. Do you remember being questioned by Mr.
3 Stewart?

4 A. I have a recollection, a vague recollection of
5 being questioned.

6 Q. Now I asked you questions about that at your
7 previous deposition; is that right?

8 A. Yes.

9 Q. Since that time, in your changes to the
10 deposition you provided additional
11 information; is that right?

12 A. Yes.

13 Q. So please tell me, Mr. Barbas, what do you
14 remember about your being questioned by Mr.
15 Stewart?

16 A. Mr. Stewart asked me if I was involved in the
17 dumping of barrels between 1968 and 1970,
18 which I answered to him that I was not present
19 at that time. I was in the Army. I was not
20 in the area.

21 Q. Um-hmm.

22 A. You're asking about the questions?

23 Q. Everything you remember about him talking to
24 you.

1 A. He told me I had a good safety record, that
2 the company was proud of me for not having any
3 fires or accidents. He asked me if I was
4 responsible for pouring the drums, and I told
5 him that I was not responsible. That's all I
6 can remember.

7 Q. Now, Mr. Stewart specifically asked you if you
8 remember if you were involved in the dumping
9 of barrels in 1969 to 1970; is that right?

10 A. 1968 to 1970.

11 Q. He specifically referred to that period of
12 time?

13 A. It sticks in my mind.

14 Q. All right.

15 Now, when he said -- Did he
16 indicate that this was the burying of barrels
17 or pouring of barrels or both?

18 A. I think more of pouring.

19 Q. Pouring of barrels?

20 A. (Witness nodded affirmatively.)

21 Q. Did you know what he was referring to?

22 A. At that time, no.

23 Q. Subsequently, you determined what he was
24 talking about?

1 A. Yes.

2 Q. What was he talking about?

3 A. I believe he --

4 MR. CHEESEMAN: Well, let me
5 object to that question. The witness can't
6 know what was in Mr. Stewart's mind. He can
7 only testify to conversations that took
8 place.

9 MR. SCHLICTMANN: Your
10 objection is noted.

11 MR. SEGAL: Wait a minute.
12 What's the question?

13 BY MR. SCHLICTMANN:

14 Q. The question is: Was it -- I know what he was
15 referring to, and Mr. Barbas said he
16 subsequently knew what he was referring to,
17 and I'm asking what was he referring to, if
18 you know?

19 MR. SEGAL: I think the
20 question could be did he know what he was
21 referring to?

22 What did you think he referred
23 to?

24 A. Subsequently yes.

1 Q. Tell me, what was it.

2 A. I think he was trying to find out about the
3 emptying of drums into the excavated pit.

4 Q. Which excavated pit?

5 A. The one that I mentioned, that I had dumped
6 the contents of 10 to 20 barrels.

7 Q. All right.

8 Now, how did you come to
9 believe that that's what he was referring to?

10 A. How did I come to believe that?

11 Q. Yes.

12 A. To think that?

13 Q. Um-hmm.

14 A. I think maybe he had his dates mixed up.

15 Q. Why do you say that?

16 A. Because he asked if it was in 1968 to 1970.

17 Q. Yes.

18 And why do you think he was
19 mixed up?

20 A. Because, if I'm not mistaken, the time of the
21 dumping of the barrels was after the second
22 addition or about approximately that time.

23 Q. Okay.

24 So, did you tell him at that

1 meeting?

2 A. No.

3 Q. Did he tell you what he knew about dumping
4 between 1968 and 1970?

5 A. I don't remember.

6 Q. Well, do you have any recollection at all what
7 he was referring to when he talked about the
8 dumping of barrels in 1968 to 1970?

9 A. No. Not at that time.

10 Q. All right.

11 From what source did you learn
12 that he must have been referring to the
13 dumping that you were involved in?

14 A. When I read a report sent to the EPA from
15 Cryovac stating that they had poured the
16 material from 10 to 20 drums into an excavated
17 pit along with varying construction materials,
18 that's all.

19 Q. And when did you read this report?

20 A. About a month ago.

21 Q. Prior to that time, you didn't know what Mr.
22 Stewart was referring to?

23 A. No.

24 Q. So, about a month ago, that's when you

1 determined Mr. Stewart must have been talking
2 about the time that you dumped barrels?

3 A. Yes.

4 Q. All right.

5 Since your two depositions, you
6 have had time to think about who ordered you
7 to dump those barrels, pour those barrels, is
8 that right?

9 A. Yes.

10 Q. And what do you remember about anybody telling
11 you to do that?

12 A. Paul Shallin asked me if I would mind pouring
13 the contents of the barrels into a pit. And I
14 told him, "What have we been saving this
15 material for?" He says, "Well, it's not
16 hazardous. You can pour it."

17 Q. He asked if you would participate in that?

18 A. Yes.

19 Q. And what did you say?

20 A. Well, before I gave him an answer, I asked him
21 if it was -- all this time we were saving the
22 material to have it sent out to a legal
23 disposal firm; and he said that it was not
24 hazardous, that we could pour it.

1 Q. Did he say anything else that you remember?

2 A. That's all I remember.

3 Q. Now, Mr. Barbas, you're familiar with the area
4 that has been excavated in which drums were
5 found on the Grace property?

6 A. Am I familiar with the area?

7 Q. Yes.

8 A. Yes.

9 Q. Do you know where those drums were excavated?

10 A. Yes.

11 Q. And the area where those drums were excavated
12 was not the area where you poured drums; is
13 that right?

14 A. I'm not sure about that.

15 Q. Well, Mr. Barbas, they didn't excavate the
16 area a hundred feet behind the main building
17 to the right of the warehouse?

18 MR. CHEESEMAN: I think the
19 witness is giving you a layman's estimate of
20 the distance.

21 MR. SCHLICHTMANN: If you mean
22 his estimate --

23 MR. CHEESEMAN: If you ask him,
24 he thinks that the material he poured into a

1 pit occurred at approximately the same
2 location as where the drums were dug up, I
3 think that's a fair question.

4 MR. SCHLICTMANN: All right.
5 I'll ask him that fair question now, and I'll
6 ask him an unfair question.

7 BY MR. SCHLICTMAN:

8 Q. Mr. Barbas, --

9 MR. SEGAL: Mr. Schlichtmann, I
10 want to note for the record, is
11 straightforward and openhanded.

12 MR. SCHLICTMANN: That's
13 right. So, I'll ask you unfair and I'll ask
14 you fair.

15 MR. SEGAL: Go ahead. We'll
16 answer the fair one. We might even answer the
17 unfair one, who knows.

18 BY MR. SCHLICTMANN:

19 Q. Now, Mr. Barbas, the area that you're familiar
20 with where drums were dug up --

21 A. Yes.

22 Q. -- that's not the same area where you poured
23 your drums; is that right?

24 A. I'm trying to say I'm not sure. I'm not sure

1 if it's the same area.

2 Q. But you know where the drums were dug up?

3 A. Yes.

4 Q. All right.

5 And do you know that that's
6 some distance behind the warehouse; isn't that
7 right?

8 A. Not true.

9 MR. CHEESEMAN: I think that's
10 untrue.

11 A. You're not correct there.

12 Q. I'm not correct?

13 A. No.

14 Q. You were present when the drums were
15 excavated?

16 A. Yes.

17 Q. And --

18 A. Some of the drums. Some of the drums. I saw
19 a couple of them come up.

20 Q. So, you saw a couple of them come up?

21 A. Right.

22 Q. You saw the drums?

23 A. Yes.

24 Q. You saw the color of the drums?

1 A. I saw drums.

2 Q. Now, was that the area where you poured the
3 drums?

4 A. I'm trying to tell you I'm not sure if that's
5 the same area. It's in the same general area,
6 but I'm not sure if that's the same spot. I
7 think that's what you're trying to ask.

8 Q. Well, let's go back to what happened on that
9 day, all right?

10 Was this a weekday or weekend?

11 MR. SEGAL: Wait a minute.

12 Which day are you talking about? The day of
13 of the excavation or the pouring?

14 BY MR. SCHLICTMANN:

15 Q. No, when you poured the drums. Was it a
16 weekend or a weekday?

17 A. A weekday.

18 Q. A weekday?

19 A. Yes.

20 Q. And when did Mr. Shallin come to you and ask
21 you to pour the drums?

22 A. Approximately a day or two before the actual
23 pouring.

24 Q. A day or two before?

1 A. Yes.

2 Q. It was also a weekday?

3 A. (Witness nodded affirmatively.)

4 Q. Okay.

5 You were working in the paint
6 shop?

7 A. Yes.

8 Q. And this was the morning, the afternoon or the
9 evening when Mr. Shallin came to you?

10 A. I'm not sure of the exact time.

11 Q. Okay.

12 Now, when Mr. Shallin came to
13 you, I want you to tell me everything you
14 remember Mr. Shallin telling you and
15 everything you told Mr. Shallin.

16 A. Mr. Shallin asked me if I would participate in
17 emptying the contents of approximately 10 to
18 20 barrels into an excavated pit, and I told
19 him that I wanted to know why they weren't
20 going to send the barrels out to get legally
21 disposed. And he said there's nothing really
22 bad in those barrels; he says, "We'll do it
23 from now on."

24 Q. We'll do what from now on?

1 A. We'll dispose of them afterwards, but these
2 ones here we're going to empty into the pit.

3 Q. All right.

4 What else?

5 A. Didn't you ask what the conversation was?

6 Q. Everything he said to you and everything you
7 said to him.

8 MR. SEGAL: The question is:
9 Do you have a memory of anything else being
10 said at that particular conversation?

11 A. He said he was going to give me some helpers.
12 He gave me Joe Meola to help me.

13 MR. SEGAL: No, the question is
14 not what he gave you. The question is: Do
15 you have a memory now of anything else being
16 said at that conversation, Tom?

17 A. No.

18 MR. SEGAL: Okay. Next
19 question.

20 BY MR. SCHLICTMANN:

21 Q. Now, he said to you he's going to give you
22 some helpers; is that right?

23 A. Yes.

24 Q. Did he say who the helpers he was going to

1 give you were?

2 A. Joe Meola.

3 Q. He said Joe Meola?

4 A. (Witness nodded affirmatively.)

5 Q. What else did he say about giving you helpers?

6 A. That's all he said.

7 Q. All right.

8 Then what did you say when he
9 said that he was going to give you helpers?

10 A. I said fine.

11 Q. Didn't you say something about the fact that
12 whether it was hazardous or not?

13 MR. CHEESEMAN: I think he's
14 already mentioned that.

15 A. I mentioned that at the beginning.

16 Q. So, after he talked about the helpers, you
17 said it was okay, you would do it?

18 A. Yeah.

19 Q. All right.

20 Did he indicate to you that he
21 wanted you in charge of the project?

22 A. He didn't say anything about being in charge.

23 Q. Did you understand he was asking you to be the
24 one in charge?

1 A. I didn't understand him to say that.

2 Q. He mentioned helpers, but he only mentioned
3 Joe Meola's name?

4 A. Yes.

5 Q. He didn't mention any other names?

6 A. No one else.

7 Q. Did you say anything else to him at that time?

8 A. No.

9 Q. Now, between that conversation and the actual
10 pouring of the drums, which happened what, a
11 day or two later; is that right?

12 A. Approximately.

13 Q. Okay.

14 Did you have any other
15 conversations with Mr. Shallin about that?

16 A. I can't remember.

17 Q. Did you have any conversations with anybody
18 prior to your pouring the drums a day or two
19 later?

20 MR. CHEESEMAN: About the...?

21 MR. SCHLICTMANN: About the
22 pouring of the drums, about the project?

23 A. No. Not that I remember.

24 Q. Did you talk to Joe Meola?

1 A. I might have.

2 Q. But you don't remember?

3 A. I don't remember.

4 Q. All right.

5 Now, on that -- you think it
6 was a day or two later?

7 A. Yes.

8 Q. All right.

9 I want you to tell me
10 absolutely everything that you remember from
11 the beginning of that project to the end of
12 that project, and Mr. Barbas, I'm going to ask
13 you to search your mind and tell me absolutely
14 everything that you remember about that
15 event.

16 MR. SEGAL: Wait a minute. Is
17 this anything additional to what he's just
18 testified, or the whole sequence?

19 MR. SCHLICTMANN: Yes. I want
20 the whole sequence. Everything.

21 MR. SEGAL: He wants you to
22 repeat what you've already said, and if
23 there's anything else that you missed throw
24 that in, too. You understand the question?

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THE WITNESS: Yes.

A. When we went out to --

Q. When you say "we", who are you referring to?

A. Joe Meola and myself.

Q. This was in the morning?

A. In the morning.

Q. This was a weekday?

A. A weekday.

Q. What time of year was this?

A. The only thing I remember was that the ground was damp and muddy. I don't know the season. There was no snow.

Q. All right.

It was after the summer?

A. I don't know.

Q. Well, let me ask you this: When Mr. Shallin came to you and said to pour some barrels, he said -- he referred to a number of barrels; he referred to a number when he referred to the barrels?

A. No.

Q. He didn't say how many barrels?

A. He said "the barrels".

Q. Do you know what he said when he referred to

- 1 the barrels?
- 2 A. Yes. The barrels of waste paint, sludge and
3 waste solvents that were stacked along the
4 fence.
- 5 Q. How many drums was that?
- 6 A. I stated before, I think approximately 10 to
7 20 barrels.
- 8 Q. And where exactly were they to the rear of the
9 building?
- 10 A. Along a fenced-in area, on the outside of a
11 fenced-in area, approximately 40 feet from the
12 building.
- 13 Q. All right.
- 14 Approximately 40 feet from the
15 building there was a fenced area to the rear
16 of the building; right?
- 17 A. Yes.
- 18 Q. That fenced things in?
- 19 A. Right.
- 20 Q. Were these within the fenced-in area?
- 21 A. No, they were outside of the fenced-in area.
- 22 Q. Outside the fenced-in area?
- 23 A. (Witness nodded affirmatively.)
- 24 Q. How many feet from the fence?

1 A. They were up against the fence.

2 Q. Up against the fence?

3 A. Yes.

4 Q. Outside the fence?

5 A. Yes.

6 Q. All right.

7 And, approximately, were they
8 in rows of one or two deep?

9 A. I remember one row.

10 Q. One row?

11 A. One row.

12 Q. Which went approximately how many feet?

13 A. 30 feet.

14 Q. Okay.

15 And were they all different
16 colors or one color?

17 A. I remember all -- all one color.

18 Q. What color was that?

19 A. Black drums with white tops.

20 Q. Did they have a white stripe? Was it all
21 black with a white top?

22 A. The body of the barrel was black; the top was
23 painted white.

24 Q. And all these drums were black with a white

1 top?

2 A. To the best of my recollection.

3 Q. All right.

4 And they were approximately 10

5 to 20?

6 A. Yes.

7 Q. Could there have been more than 20?

8 A. I don't remember that. All I remember is 10

9 to 20.

10 Q. Well, when you say all that you remember, you

11 mean could it have been more than 20?

12 A. Could have been.

13 Q. All right.

14 How many more than 20 could it

15 have been?

16 MR. CHEESEMAN: Well, I object,

17 Jan. He said -- estimated there were 10 to

18 20.

19 MR. SEGAL: I think the

20 question is: Do you have have a memory more

21 than 20 drums being there?

22 A. No.

23 Q. So, you're sure it wasn't more than 20, or

24 you're not sure?

1 A. I'd say between 10 and 20.

2 Q. Are you sure that it was no more than 20?

3 A. I'm fairly convinced it was between 10 and
4 20. I don't know if it was any more than 20.

5 Q. Could it have been more than 20?

6 MR. CHEESEMAN: Objection. If
7 it was 30 feet long, there were 11 drums. If
8 there were more than 20, it must have been 60
9 feet long.

10 MR. SCHLICTMANN: I'm trying to
11 get the truth here.

12 MR. SEGAL: Next question.

13 BY MR. SCHLICTMANN:

14 Q. What's your answer?

15 MR. SEGAL: What's the
16 question?

17 MR. SCHLICTMANN: What's my
18 question?

19 [Whereupon, the last question
20 was read aloud as recorded by
21 the Court Reporter.]

22 MR. SCHLICTMANN: Right. I
23 have a right to ask him could it have been
24 more than 20, and he has an obligation to

1 answer that it could have been or couldn't
2 have been.

3 MR. CHEESEMAN: Note my
4 objection.

5 MR. SEGAL: He already answered
6 that question.

7 MR. SCHLICTMANN: No.

8 MR. SEGAL: He said he has a
9 recollection of not more than 20.

10 MR. SCHLICTMANN: You like to
11 characterize his answers to my previous
12 question.

13 MR. SEGAL: Let me finish and
14 then I'll let you finish. I think that's a
15 fair way to proceed. I guess it could have
16 been a hundred, too. But his recollection is
17 he has a recollection of not more than 20.
18 So, it could have been anything. I'm not sure
19 that's a very proper question.

20 MR. SCHLICTMANN: All right.
21 Proper or improper, I have a right to ask it.

22 BY MR. SCHLICTMANN:

23 Q. And, Mr. Barbas, I'm asking you, could it have
24 been more than 20 drums?

1 MR. SEGAL: I have a right to
2 tell him don't answer it. Don't answer it.

3 BY MR. SCHLICTMANN:

4 Q. You're refusing to answer that question about
5 whether it's more than 20 drums?

6 MR. CHEESEMAN: I don't think
7 it's the witness' job to refuse. He's acting
8 under direction of his counsel. I don't think
9 it's appropriate --

10 MR. SEGAL: Let's get the
11 question again.

12 MR. SCHLICTMANN: Fine.

13 BY MR. SCHLICTMANN:

14 Q. Mr. Barbas, you're familiar with the number of
15 drums in the rear of the plant, is that right?

16 A. Yes.

17 MR. SEGAL: No, he isn't. He
18 just said it could have been 10 to 20.

19 BY MR. SCHLICTMANN:

20 Q. You made an estimate of how many you think
21 were out there. What I'm trying to do, Mr.
22 Barbas, is find out. Is it possible, based on
23 what you know, that you can remember it could
24 have been more than 20? I want to know that

1 you're pretty sure it was not more than 20?

2 A. I'm pretty sure it was not more than 20.

3 Q. But you don't remember counting them?

4 A. No.

5 Q. Now, these drums that you're referring to, who
6 placed those out there?

7 A. I did.

8 MR. CHEESEMAN: Who placed them
9 where?

10 MR. SCHLICTMANN: Who placed
11 where they were, outside the fence?

12 A. I would say I did, along with other people.

13 Q. What other people?

14 A. I'd say Joe Meola.

15 Q. And who else?

16 A. Angelo Mareara. I believe that's -- he's a
17 retired worker. He's passed away since.

18 Q. Strike the comment.

19 Angelo Mareara, and who else?

20 A. I don't know the spelling.

21 Q. That's all. Who else?

22 A. Anybody else that would have had empty barrels
23 to bring out there.

24 Q. Well, do you know anybody else?

1 A. I can't recall at this moment.

2 Q. And how long were they stored in that way
3 outside the fence?

4 MR. CHEESEMAN: Do you mean the
5 specific barrels that were there at the time
6 of --

7 MR. SCHLICTMANN: Yes.

8 MR. SEGAL: -- of pouring them
9 into the pit? You want him to estimate how
10 long a particular drum had been --

11 MR. SCHLICTMANN: If he could
12 do it.

13 MR. SEGAL: The question is:
14 How long was that process maintained when you
15 put barrels out and put them by the fence?

16 MR. SCHLICTMANN: Well, we'll
17 get to it by that way, too.

18 MR. SEGAL: What's the first
19 question?

20 MR. SCHLICTMANN: We'll try my
21 way first, and we can try it your way, and
22 we'll try it Bill's way, and we'll try it your
23 way and maybe Tom's way.

24 MR. SEGAL: What's the first

1 way?

2 BY MR. SCHLICTMANN:

3 Q. The first way is: How long were they stored
4 out that way in the way that you described it,
5 to your knowledge?

6 MR. SEGAL: Do you understand
7 the question?

8 A. How long were they stored out there?

9 Q. Yes, in the way that you've described.

10 A. Since approximately -- approximately 1961.

11 Q. All right.

12 These particular drums were
13 stored outside the fence that you're referring
14 to since 1961?

15 A. Approximately 1961.

16 MR. SEGAL: Wait a minute. Do
17 you mean the same drums or drums were stored
18 out there?

19 BY MR. SCHLICTMANN:

20 Q. Yes. Are these the same drums or different
21 drums?

22 MR. SEGAL: He's saying were
23 the same drums stored out there from '61
24 till --

1 A. As they accumulated. As they accumulated from
2 1961.

3 Q. They were stored out there?

4 A. Yes.

5 Q. Okay.

6 Now, let's go back to the
7 morning of this project when you poured the
8 drums. Okay.

9 First thing you did that
10 morning, you came to the plant?

11 A. Yes.

12 Q. All right.

13 And then what did you do?
14 Well, excuse me, I'm sorry. Before we get to
15 that, Mr. Shallin referred to a pit; he said
16 "the pit" or did he say "a pit" when he asked
17 you to pour these drums?

18 A. I'm not sure about "the pit" or "a pit".

19 Q. Was he referring to a pit which had previously
20 been dug?

21 A. Yes.

22 MR. CHEESEMAN: You're asking
23 about his understanding?

24 MR. SCHLICTMANN: Exactly.

1 Whatever I ask you is to your knowledge or to
2 your understanding. Obviously you don't know
3 what anybody else knew or understood. So, I'm
4 always asking what your knowledge is or your
5 understanding.

6 BY MR. SCHLICHTMANN:

7 Q. So, what was your understanding that the pit
8 Mr. Shallin was referring to?

9 A. The pit that was excavated to the rear of the
10 plant.

11 Q. All right.

12 You had seen a pit being
13 excavated to the rear of the plant?

14 A. Yes.

15 Q. When did you see this pit being excavated?

16 A. I'd say a couple of days before the pouring of
17 the barrels.

18 Q. All right.

19 Mr. Shallin came to you one or
20 two days before you poured the drums; is that
21 right?

22 A. Yes.

23 Q. How many days before Mr. Shallin came to you
24 was this pit excavated?

1 A. I'd say it was about the same time.

2 Q. A day or two before he came to you?

3 A. Yes.

4 MR. CHEESEMAN: That's not what
5 the witness testified, Jan.

6 MR. SCHLICTMANN: I'm asking
7 him.

8 MR. CHEESEMAN: Well, don't
9 mislead him with your questions.

10 MR. SCHLICTMANN: (To the
11 witness) Mr. Barbas, don't let me mislead you,
12 please. Okay?

13 MR. CHEESEMAN: He testified --

14 MR. SCHLICTMANN: (To the
15 witness) If you don't understand anything I
16 say or somehow you think I've twisted
17 something, I want you to correct me, all
18 right?

19 MR. CHEESEMAN: He testified
20 that he thought that the pit was excavated at
21 about the same time that Mr. Shallin spoke to
22 him.

23 MR. SCHLICTMANN: Maybe that's
24 what you heard him say, but that's not what I

1 heard him say.

2 Mr. SEGAL: Let's have a
3 question.

4 BY MR. SCHLICTMANN:

5 Q. Now, Mr. Barbas, Mr. Shallin referred to "a
6 pit" or "the pit" --

7 A. Yes.

8 Q. -- when he talked to you?

9 A. Yes.

10 Q. You knew what he was referring to?

11 A. Yes.

12 Q. All right.

13 So, there had been a pit that
14 had previously been excavated prior to Mr.
15 Shallin talking to you; is that right?

16 A. That's hard to define.

17 Q. It is?

18 A. I mean exactly if it was there or he talked to
19 me about it.

20 Q. You said Mr. Shallin came to you and talked to
21 you about pouring drums into a pit?

22 A. Yes.

23 Q. Did he say "a pit" or did he say "the pit"?

24 MR. SEGAL: What you recall.

1 A. I'm not sure of the context of the
2 conversation. Whether it was "a" or "the".

3 Q. Was it your understanding he was referring to
4 something that you were familiar, a pit to
5 which you were familiar?

6 A. Yes.

7 Q. What pit were you familiar with?

8 A. The pit that had been excavated.

9 Q. The pit that had been excavated. What pit had
10 been excavated?

11 A. A pit to the rear of the building that was
12 excavated by some construction company, like a
13 backhoe.

14 Q. All right.

15 Well, how long before -- how
16 much time -- what period was this pit
17 excavated prior to Mr. Shallin talking to you
18 about it?

19 MR. SEGAL: Well, if you know.

20 BY MR. SCHLICHTMANN:

21 Q. Mr. Barbas, --

22 MR. SEGAL: Try it this way.

23 BY MR. SCHLICHTMANN:

24 Q. -- you knew that there was a pit out there, is

1 that right, when Mr. Shallin was talking to
2 you; isn't that correct?

3 A. There was a -- There was a pit, the exact time
4 he asked me, and they dug it -- I'm not too
5 sure about that.

6 Q. But you know that Mr. Shallin talked to you
7 about pouring drums into a pit?

8 A. Yes. I think you're trying to get at the
9 exact time.

10 Q. No. I'm trying to understand when Mr. Shallin
11 talked to you about pouring drums into a pit
12 or the pit that he was talking about, a pit to
13 which you were familiar, you were familiar
14 with a pit he was talking about?

15 A. Yes.

16 Q. You didn't say, "Mr. Shallin, should I dig the
17 pit?" or "What pit are you talking about?" You
18 knew what pit he was talking about?

19 A. Yes.

20 Q. All right.

21 Now, I want you to tell me what
22 you knew about that pit, who dug it, how it
23 was dug, when was it dug?

24 MR. CHEESEMAN: Let's do it one

1 at a time. You want when?

2 THE WITNESS: You want when?

3 MR. CHEESEMAN: When was the
4 pit --

5 BY MR. SCHLICHTMANN:

6 Q. I want you to tell me everything you knew
7 about the pit that Mr. Shallin referred to at
8 the time, that Mr. Shallin referred to a pit
9 and pouring drums into it. I want you to tell
10 me what you knew at that time about a pit or
11 that particular pit.

12 A. I understand what you're trying to ask.

13 Q. Good. I want you to please tell me.

14 MR. SEGAL: What he wants you
15 to do is to think back about the conversation
16 with Mr. Shallin. He asked about a pit. What
17 was your knowledge at that point about the
18 pit? Not today but, you know, then.

19 A. That was a pit that was excavated by a
20 backhoe, a construction company dug a pit out
21 there.

22 Q. They dug a pit out in the back?

23 A. Yes.

24 Q. You had seen them excavate it?

- 1 A. Yes.
- 2 Q. You had seen them dig it out?
- 3 MR. CHEESEMAN: Dig the hole?
- 4 MR. SCHLICTMANN: Dig the
- 5 hole.
- 6 A. Yes.
- 7 Q. This was the Manzelli Construction Company?
- 8 MR. CHEESEMAN: If you know.
- 9 A. I don't know that, to be exact.
- 10 Q. But you saw them dig that pit?
- 11 MR. CHEESEMAN: Who is "they"?
- 12 MR. SCHLICTMANN: The
- 13 construction people.
- 14 MR. SEGAL: The question is:
- 15 Did you see somebody dig the pit?
- 16 BY MR. SCHLICTMANN:
- 17 Q. Did you see somebody dig the pit, Tom?
- 18 A. No.
- 19 Q. Did you see a backhoe digging the pit?
- 20 A. I saw a backhoe near there, but I didn't see
- 21 them dig a pit.
- 22 Q. You saw a pit that was dug?
- 23 A. Yes.
- 24 Q. Describe that pit.

1 A. Before I make any statement, I'm just going to
2 say it's about from there to there, and twice
3 as deep. (Indicating.) I don't know how much
4 that would be.

5 MR. CHEESEMAN: When you say
6 "twice as deep", you mean twice as long?

7 THE WITNESS: Twice as long.
8 Say 20 X 40. Something like that.

9 BY MR. SCHLICTMANN:

10 Q. I want you to describe -- was it a hole or was
11 it a trench?

12 MR. CHEESEMAN: Well, you
13 better define what you mean by "a hole" and "a
14 trench" before that question's answered.

15 BY MR. SCHLICTMANN:

16 Q. Well, do you understand what a hole is?

17 MR. SEGAL: When does a hole
18 become a trench?

19 MR. SCHLICTMANN: It's a
20 philosophical question, I guess.

21 MR. SEGAL: No.

22 BY MR. SCHLICTMANN:

23 Q. Was it a circle, or was it a square, or was it
24 a rectangular hole?

1 A. Rectangular hole.

2 Q. You would agree that a rectangular hole is a
3 trench?

4 MR. CHEESEMAN: What is that?

5 MR. SCHLICTMANN: I'm going to
6 call it a trench.

7 MR. SEGAL: I think a trench is
8 an oblong.

9 MR. SCHLICTMANN: No.

10 MR. CHEESEMAN: I think the
11 purpose of your insisting on the word "trench"
12 is to confuse this hole with some other
13 features of the property that were definitely
14 referred to trenches in the past and by all
15 the parties.

16 MR. SCHLICTMANN: Call it a
17 ditch. How's that? Can we call it a ditch?

18 MR. SEGAL: No. I don't think
19 a ditch is appropriate.

20 BY MR. SCHLICTMANN:

21 Q. How would you describe it, Mr. Barbas?

22 MR. SEGAL: He's mentioned it
23 as a pit. What's the matter with that? Can't
24 we all agree to that?

1 MR. SCHLICTMANN: No, I can't
2 agree.

3 BY MR. SCHLICTMANN:

4 Q. Is it a rectangular pit? What's the
5 dimensions of that excavation?

6 MR. CHEESEMAN: He's already
7 told you.

8 BY MR. SCHLICTMANN:

9 Q. Was it longer than it was wide?

10 MR. CHEESEMAN: He already told
11 you it was about 20 feet X 40 feet.

12 A. Approximately 20 X 40.

13 Q. Was it longer than it was wide?

14 A. Yes.

15 Q. Do you know how long a foot is, Mr. Barbas?

16 A. Yes.

17 Q. So, when you say "a hundred feet", you know
18 what a hundred feet is?

19 A. Approximately.

20 MR. CHEESEMAN: Are you asking
21 him if he's approximated --

22 BY MR. SCHLICTMANN:

23 Q. You know what a hundred feet is?

24 MR. SEGAL: This is confusing

1 because he said 20 X 40, although he said it
2 was longer than it was wide. Now, I never did
3 well in math, but 40 is longer than 20.

4 MR. SCHLICTMANN: Well, it
5 depends on what is --

6 MR. SEGAL: That's why we're in
7 this mess.

8 BY MR. SCHLICTMANN:

9 Q. Mr. Barbas, you think you can estimate a
10 hundred feet pretty well?

11 A. Can I estimate a hundred feet?

12 Q. Yes. Do you know what a hundred feet is?

13 MR. CHEESEMAN: Object to the
14 form.

15 Q. Do you --

16 MR. SEGAL: He means how long
17 is a hundred feet; do you understand?

18 A. I have an idea. I have an idea what a hundred
19 feet is.

20 Q. Do you know the difference between a hundred
21 feet and 200 feet?

22 A. Yes.

23 Q. And a hundred feet and 500 feet?

24 A. Yes.

1 Q. And a hundred feet and a thousand feet?

2 MR. CHEESEMAN: When you ask
3 him does he know the difference, are you
4 asking him if he knows the difference between
5 those numbers, or are you asking him if he can
6 distinguish between those distances?

7 MR. SCHLICTMANN: This is going
8 to be a very, very long deposition if you keep
9 this up.

10 MR. CHEESEMAN: If you ask
11 clear questions, you'll get clear answers.

12 MR. SCHLICTMANN: You're not in
13 a position to tell me whether my questions are
14 clear or not.

15 MR. SEGAL: Your obligation is
16 to ask a clear question and you're being very
17 confusing.

18 MR. SCHLICTMANN: I know. I'm
19 very confusing and I really apologize and he's
20 going to have to put up with it.

21 BY MR. SCHLICTMANN:

22 Q. Mr. Barbas, explain the dimensions of this
23 excavated area in relationship to where the
24 main building was.

1 A. Wait a minute. That's two questions there,
2 isn't it?

3 Q. Yeah.

4 MR. SEGAL: Let's take the
5 first one. The first one is: How far was the
6 pit of the excavated area --

7 BY MR. SCHLICTMANN:

8 Q. No. I want you to describe as best you can
9 where the excavated area was in relationship
10 to the main building.

11 MR. SEGAL: You mean northwest
12 or southwest?

13 MR. SCHLICTMANN: Yes.

14 A. I think I made a statement before, it's
15 approximately 30 feet from the driveway, from
16 the road in the back.

17 Q. Yeah. 30 feet from the road in the back?

18 A. (Witness nodded affirmatively.)

19 Q. The paved area in the back?

20 A. Yes, paved area.

21 Q. And how many feet from the main building?

22 A. 60 to 70 feet.

23 Q. 60 to 70 feet from the main building?

24 A. Yes.

1 Q. Now, do you know what 60 or 70 feet is; do you
2 know how long it is?

3 A. Yes.

4 Q. So, you're sure it was 60 to 70 feet from the
5 main building; is that right?

6 A. I'm saying approximately 60 to 70 feet.

7 Q. Are you sure it was 60 to 70 feet?

8 MR. SEGAL: I'm not sure it's a
9 fair question.

10 MR. SCHLICTMANN: I'm sure it's
11 not a fair question.

12 BY MR. SCHLICTMANN:

13 Q. I'm asking, you think it's unfair; why don't
14 you say it's unfair, Mr. Barbas?

15 A. I'm not.

16 Q. You're not?

17 A. You asked for an estimate, didn't you, and I
18 gave you an estimate.

19 Q. All right.

20 And if you're standing at that
21 excavated area and you're looking at the
22 warehouse, would you be looking straight on to
23 the warehouse?

24 MR. CHEESEMAN: What is your

1 question again?

2 MR. SEGAL: What was that
3 again?

4 BY MR. SCHLICTMANN:

5 Q. If you stood at that excavated area --

6 MR. SEGAL: That part depends
7 on where you're standing. Wait a minute. The
8 Stenographer did not get the question, so you
9 are going to have to ask it again.

10 BY MR. SCHLICTMANN:

11 Q. How far was the excavated area from the
12 warehouse?

13 A. From the warehouse?

14 Q. Yes.

15 A. I would say about a hundred feet.

16 Q. A hundred feet from the warehouse?

17 A. Approximately.

18 Q. And 60 to 70 feet from the main building?

19 A. Yes.

20 MR. CHEESEMAN: Wait a minute.
21 What are you asking him about, the -- let me
22 be sure that the question --

23 MR. SCHLICTMANN: Look, Bill,
24 I'm not going to sit here and explain what I'm

1 asking. I have a right to ask the questions.
2 He has an obligation to answer them. If you
3 want to object, you object. We're not going
4 to have any more commentary. We're not going
5 to fill up the god-damn thing with colloquy
6 between the attorneys.

7 BY MR. SCHLICTMANN:

8 Q. Mr. Barbas, I'm asking you a question: You
9 said the excavated area is a hundred feet from
10 the warehouse; is that right?

11 A. Approximately.

12 Q. And was it also 60 to 70 feet from the main
13 building, sir?

14 A. Approximately.

15 Q. Thank you.

16 MR. CHEESEMAN: Now, I'm going
17 to interrupt here, and if you don't want me
18 to, we can can suspend the deposition now and
19 go see the judge, because I have a right to
20 represent my client and protect the record in
21 this case. The witness previously stated that
22 he thought the excavation was approximately 30
23 feet beyond the end of the paved area, and
24 that he thought that the end of the paved area

1 was 60 to 70 feet from the main building; that
2 would make the excavation ninety to a hundred
3 feet behind the main building, and I just want
4 to make sure that the witness understood your
5 question correctly, and when he now says the
6 excavation was 60 to 70 feet behind the main
7 building, that that's what he means. Whether,
8 in fact, he means --

9 MR. SCHLICTMANN: If you want
10 to coach the witness by making comments, you
11 can be free to do so.

12 BY MR. SCHLICTMANN:

13 Q. Mr. Barbas, I ask you again --

14 MR. CHEESEMAN: I have no
15 interest in coaching the witness. I have a
16 great interest --

17 MR. SCHLICTMANN: Fine.

18 MR. CHEESEMAN: Let me just
19 finish, Jan. I have a right to represent my
20 clients and the interests of my client
21 important in representing my client. I'm
22 going to insist that you ask your questions
23 clearly, and when I think there's an
24 ambiguity, I'm going to speak my piece.

1 BY MR. SCHLICTMANN:

2 Q. I'm going to ask it again.

3 MR. SEGAL: Let me make what I
4 think should be a helpful suggestion because
5 we're all interested in gaining the facts.
6 Why don't you ask him to draw a diagram, and
7 we can do it by a diagram, and we can have it
8 as an exhibit, and we can all be set.

9 MR. SCHLICTMANN: We're going
10 to do better than the diagram, but right now I
11 have the right to ask him his testimony,
12 whether he remembers.

13 BY MR. SCHLICTMANN:

14 Q. So, now, Mr. Barbas, how many feet was the
15 excavated area; now, the excavated area -- you
16 understand what I'm talking about -- how many
17 feet was the excavated area behind the main
18 building?

19 A. From the main building?

20 Q. From the main building.

21 A. A hundred feet.

22 Q. How many feet was the excavated area from the
23 warehouse?

24 A. A hundred feet. Approximately.

1 Q. Approximately 100 feet; is that right?

2 A. Yes.

3 Q. All right.

4 You got to the plant that
5 morning, and what happened on the day that you
6 poured the drums into the pit, tell me exactly
7 what happened, from the moment you got to the
8 plant, what you remember throughout that whole
9 day that you engaged in this activity?

10 A. Joe Meola and myself went out to where the
11 barrels were brought out to the front of the
12 pit, were brought out by a red truck.

13 Q. Who brought them out there?

14 A. A red flatbed truck with a hydraulic lifter in
15 the back.

16 Q. Who drove the truck?

17 A. I don't remember the guy.

18 Q. Did you watch the truck pick up the drums and
19 bring them over to the excavation?

20 A. The question is, did I watch --

21 Q. Yes.

22 A. -- the person?

23 Q. How do you know a red truck picked up the
24 drums and brought them to an excavated area;

- 1 how do you know that?
- 2 A. I remember seeing a red truck.
- 3 Q. Do you remember seeing the truck pick up the
- 4 drums and bring them to the excavated area?
- 5 A. Yes.
- 6 Q. You saw that?
- 7 A. (Witness nodded affirmatively.)
- 8 Q. So, when you got to the plant that morning you
- 9 went to the rear of the plant that morning?
- 10 A. Yes.
- 11 Q. When you got to the rear of the plant, what
- 12 did you see?
- 13 A. The barrels were on the ground.
- 14 Q. And the place that they had been stored
- 15 outside the fence, or were they someplace
- 16 else?
- 17 A. They were right to the front of the pit.
- 18 Q. So, they had already been moved?
- 19 A. Yes.
- 20 Q. Prior to your getting there?
- 21 A. Yes.
- 22 Q. So, you don't know how they got to that
- 23 excavated area or you don't know --
- 24 A. A red truck.

1 Q. Now, how do you know a red truck moved them?

2 A. Because I remember a red truck moving them.

3 Q. So, you saw them being moved, then?

4 A. Yes.

5 Q. So, when you got to the rear of the plant, you
6 saw some drums to the excavated area, and
7 there were some other drums outside of the
8 fence; is that right?

9 A. No. When I got to the excavated area, the
10 drums were on the ground.

11 Q. Right.

12 A. The truck was not there anymore.

13 Q. So, you saw the truck move them, though?

14 A. Yes. I would say it was the day before.

15 Q. So, that happened the day before?

16 A. Yes.

17 Q. All right.

18 Now, when you say "the day
19 before", that would be the day after Mr.
20 Shallin talked to you?

21 A. I'm not sure about that. It was in the same
22 -- around the same time period.

23 Q. Well, you previously testified -- and correct
24 me if I'm wrong -- that the day or two after

1 Mr. Shallin talked to you, you poured the
2 drums; is that right?

3 A. Yes.

4 Q. Now, you're saying the day before you poured
5 the drums, the drums were moved?

6 A. I would say yes.

7 Q. All right.

8 Well, are you saying, then,
9 that the day after Mr. Shallin talked to you
10 about pouring the drums, that's the day you
11 moved them, and then, the day after that you
12 poured --

13 A. I didn't move them. Wait a minute. You said I
14 moved them. I didn't move them.

15 Q. That they were moved?

16 A. Yes.

17 Q. That you saw them being moved?

18 A. Yes.

19 Q. That was the day after Mr. Shallin talked to
20 you?

21 A. I would say approximately.

22 Q. And then the day after is when you poured them
23 into the pit?

24 A. Yes.

1 Q. Now, did you do anything after Mr. Shallin
2 talked to you; did you do anything to move the
3 drums or to make sure that the drums were
4 moved; did you talk to anybody?

5 A. No.

6 Q. Did you request that it be done?

7 A. No.

8 Q. Did Mr. Shallin indicate that the drums were
9 going to be moved for you?

10 A. I don't remember that.

11 Q. Okay.

12 Did you do anything or were you
13 aware of anything happening?

14 On the date that Mr. Shallin
15 came to you and talked to you about pouring
16 the drums, are you aware of anything happening
17 whatsoever concerning allowing you to be able
18 to pour those drums into the pit?

19 A. I don't understand that question.

20 Q. All right.

21 Did anything happen that day
22 that Mr. Shallin talked to you, anything that
23 you saw or heard which related to the
24 excavated area, the drums, or the movement of

1 those drums to the excavated area?

2 A. No, I don't remember.

3 Q. Nothing?

4 MR. CHEESEMAN: He says he
5 doesn't remember.

6 BY MR. SCHLICTMANN:

7 Q. You don't know about any conversations, you
8 don't know about talking to Nick or anybody
9 else?

10 A. I said I don't remember.

11 Q. The day after Mr. Shallin talked to you, do
12 you remember anything happening which related
13 to those drums?

14 A. Yes.

15 Q. What do you remember about them?

16 A. I believe they were moved into the back area
17 by a red flatbed truck with a hydraulic
18 lifter.

19 Q. I want you to tell me everything that you
20 remember that happened that day in
21 relationship to the movement of those drums.

22 A. That's all I remember about them. Just a red
23 truck.

24 Q. Did you ask the red truck to move the drums?

1 A. No.

2 Q. Do you know who asked the red truck to move
3 the drums?

4 A. No.

5 Q. How many people were driving the red truck?

6 A. I would say one, I remember one person. It
7 could have been two. I just remember one
8 person.

9 Q. All right.

10 You saw the red truck move the
11 drums?

12 A. Yes.

13 Q. How many drums did you see moved?

14 A. Approximately 10 to 20.

15 Q. So, you saw the truck move all the drums from
16 the area that you remember seeing to the
17 excavated area?

18 A. Yes.

19 Q. All right.

20 How many drums at a time were
21 moved?

22 A. I'd say they were all moved at one time.

23 Q. So, all the drums were put onto the flatbed of
24 the truck and moved at once?

1 A. Yes.

2 Q. Okay.

3 And how were they moved from
4 the ground onto the truck?

5 MR. CHEESEMAN: If you observed
6 the actual loading of the truck.

7 A. Yes. It's hard to describe unless you don't
8 know how to move a drum. It's tilted back a
9 little bit and like kitty-cornered, I guess
10 you'd call it.

11 Q. These drums were filled?

12 A. Yes.

13 Q. They were all filled?

14 MR. SEGAL: Well, did you see
15 -- did you observe the drums were filled,
16 that's the question.

17 THE WITNESS: Wait a minute.
18 He asked --

19 BY MR. SCHLICHTMANN:

20 Q. Did you know the drums were filled or were
21 full?

22 A. Approximately filled. I'm not sure they were
23 all filled.

24 Q. But you think most of them were fill.

1 How many of them do you think
2 were full; were they all full?

3 A. I'm not sure of how many were full and how
4 many were not full.

5 Q. All right.

6 When you say "not full",
7 partially filled, is that right? About how
8 much: three quarters, half, a quarter?

9 MR. SEGAL: That first implies
10 that he went out and looked at them. You
11 don't have a showing that he looked at them
12 and determined the level.

13 MR. SCHLICHTMANN: He can tell
14 me he has an idea, and I can find out how he
15 has an idea?

16 A. I have no idea of how much material was in the
17 barrels.

18 Q. Those drums are pretty heavy when they're
19 filled, aren't they?

20 A. Yes.

21 Q. All right.

22 Isn't that why the drums were
23 tilted, kitty-cornered and put onto the
24 forklift?

1 MR. CHEESEMAN: Object to the
2 form of that question.

3 A. You said the wrong word, "forklift". I said
4 "lifter", hydraulic lifter.

5 Q. They weren't lifted on there manually, were
6 they?

7 MR. SEGAL: Well, did you see
8 them put onto the truck?

9 A. I saw one person kitty-corner them and put
10 them on.

11 Q. All right.

12 Did you see him do that to all
13 the drums?

14 A. No.

15 Q. How many drums did he do that to?

16 A. I saw a couple.

17 Q. You saw a couple what?

18 A. Drums being put on that way.

19 Q. All right.

20 How were the other drums put
21 on?

22 A. I don't know that.

23 Q. So, did you come -- did you come near the end
24 of their loading of the truck?

1 A. Near the beginning.

2 Q. Near the beginning?

3 A. Yes.

4 Q. So, you saw them all loaded?

5 A. I said near the beginning. I didn't say --

6 MR. SCHLICTMANN: Tony, this is
7 Bill Cheeseman; I think you met before. Tom
8 Barbas. Terry Segal. I'm sorry.

9 MR. QUINTER: Peter Quinter.

10 MR. SCHLICTMANN: Peter
11 Quinter, Susan Winckler from Hale & Dorr.

12 BY MR. SCHLICTMANN:

13 Q. So anyway, how long were you there?

14 MR. CHEESEMAN: How long did he
15 observe this guy loading the drums onto the
16 truck; is that the question?

17 BY MR. SCHLICTMANN:

18 Q. How long were you out there in the back?

19 MR. CHEESEMAN: Let's find out
20 when we're talking about, Jan.

21 MR. SCHLICTMANN: That morning
22 that he saw the truck moving the drums.

23 A. Probably a half a minute.

24 Q. Half a minute?

- 1 A. (Witness nodded affirmatively.)
- 2 Q. So, you didn't stay to see all the drums being
3 loaded on?
- 4 A. Yes.
- 5 Q. Did you see the truck move at all?
- 6 A. No.
- 7 Q. You stayed out there just a half a minute?
- 8 A. Yes.
- 9 Q. What did you do then?
- 10 A. Went back to work.
- 11 Q. So, you never saw the truck move the drums to
12 the pit?
- 13 A. No.
- 14 Q. Later that day did you go out there again?
- 15 A. Yes.
- 16 Q. What did you see when you went out there?
- 17 A. Barrels near the edge of the pit; the barrels
18 were at the edge of the pit.
- 19 Q. Were they all standing up; were they lying on
20 their side?
- 21 A. Standing up.
- 22 Q. All of them?
- 23 A. Yes.
- 24 Q. Where was the red truck?

1 A. Gone.

2 Q. Was anybody out there by the pit?

3 A. No.

4 Q. And approximately how many drums were around
5 the pit?

6 A. 10 to 20, approximately.

7 Q. All right.

8 And did anything else happen
9 that day concerning those drums and that pit
10 that you know about?

11 A. Not that I remember.

12 Q. Did you talk to anybody that day, anybody at
13 all?

14 A. I don't remember.

15 Q. Did anybody talk to you that day about moving
16 the drums or the pouring or anything else?

17 A. About moving the drums, I don't remember
18 that.

19 Q. Do you remember Nick talking to you or you
20 having a conversation with anybody else having
21 to do with those drums or that pit?

22 MR. SEGAL: We're talking about
23 the day before they were moved?

24 MR. SCHLICTMANN: The day

1 before.

2 MR. SEGAL: I'm sorry, the day
3 before they were poured?

4 MR. SCHLICTMANN: Poured.

5 A. I don't think anybody talked to me about it.

6 Q. Now, the next day, the day that you poured the
7 drums, --

8 A. Yes.

9 Q. -- again, start from the beginning of the day
10 and tell us exactly what you did, what you
11 remember seeing, hearing, doing.

12 A. Joe Meola and myself went out with an object
13 called a bung wrench. It's a wrench
14 approximately this long (indicating) with
15 different handles, opens bungs on barrels. We
16 brought the barrels over to the edge, and let
17 the contents pour out into the trench, pit or
18 whatever.

19 Q. Now, you said you were there with Mr. Meola?

20 A. Yes.

21 Q. Who else was there besides Mr. Meola?

22 A. Frank Kelley.

23 Q. Was anybody else?

24 A. I don't remember anybody else.

1 Q. Was Paul Kelley there?

2 A. Paul Kelley?

3 Q. Yes.

4 A. I don't remember; I don't remember Paul
5 Kelley. I know he's Frank's son.

6 Q. You don't remember him being there?

7 A. I don't remember him being there.

8 Q. But you remember Frank Kelley being there and
9 Joe Meola being there?

10 A. Yes.

11 Q. And then tell me exactly what you did with the
12 drums.

13 A. I stayed there and helped empty a couple of
14 the drums.

15 Q. And tell me exactly what you did?

16 A. At that point, Frank Kelley told me I had a
17 machine to paint in the paint shop, so I left
18 for awhile.

19 Q. All right.

20 Let me tell you -- before you
21 left, I want to know everything you did before
22 you left.

23 A. Okay.

24 Q. Tell me exactly what you did that morning

1 before you left.

2 A. Okay. We knocked the drum down, knocked it
3 over, rolled it over to the edge, opened the
4 -- I don't know the right word, bung.

5 Q. Bung hole?

6 A. Yeah -- bung hole and let the contents pour
7 out.

8 Q. And how did it pour out?

9 A. Just came out.

10 Q. Into the pit?

11 A. Yes.

12 Q. All right.

13 Did you do it one at a time?

14 A. I believe it was while I was there, it was
15 about one at a time.

16 Q. All right.

17 And so you did one. Were you
18 the first one to do it?

19 A. I don't remember that.

20 Q. Was each of you responsible for a drum?

21 A. No.

22 Q. You were all helping each other?

23 A. Helping each other.

24 Q. And these were heavy drums?

1 A. They were heavy.

2 Q. All right.

3 And they were standing up
4 straight. Did you have to move them over to
5 the pit?

6 A. No, they were standing up.

7 Q. So, they were along the pit?

8 A. I wouldn't say they were along the pit. They
9 were, like, in rows. They weren't going this
10 way. They were this way. (Indicating.)

11 Q. Okay. All right.

12 So, now, tell me what
13 happened.

14 A. I emptied a couple of barrels, and I went into
15 the paint shop to finish painting a pump that
16 had to go out. I remember that distinctly.

17 Q. Yeah.

18 A. And I don't know the matter of time I had gone
19 out there and the drums had been moved from
20 the pit back to the fence.

21 Q. Where they had previously been stored?

22 A. Yes.

23 Q. Yes. All of them?

24 A. Yes. They were all there.

- 1 Q. How were they moved, do you know?
- 2 A. Flat, flat, like, pushed along --
- 3 Q. And rolled?
- 4 A. Yeah.
- 5 Q. Had you seen anybody roll them?
- 6 A. I hadn't seen anybody do that, but I could
- 7 see --
- 8 Q. Where the roll marks were?
- 9 A. Yes.
- 10 Q. And they were put back in the storage area?
- 11 A. Yes.
- 12 Q. What else did you see?
- 13 A. I looked inside the trench pit, or whatever
- 14 you call it, and I saw the material had been
- 15 in the pit, and I also noticed a couple of
- 16 bungs, the --
- 17 Q. Caps.
- 18 A. -- caps. And that's all.
- 19 Q. What, they were in the bottom of the pit?
- 20 A. Some of them; yes, sir.
- 21 Q. Some bung caps?
- 22 A. Bung caps.
- 23 Q. And there was liquid at the bottom of the pit?
- 24 A. Yes.

1 Q. Were there any drums at the bottom of the pit?

2 A. No.

3 Q. You saw none?

4 A. I saw no drums.

5 Q. Then what did you do, or what did you see?

6 You said you went into the pit; you looked
7 inside it?

8 A. Yeah. I saw no drums.

9 Q. And what else?

10 A. I saw liquid.

11 Q. Yes.

12 A. And a few bung caps.

13 Q. Okay.

14 And then what?

15 A. And then from there I went back, and all the
16 drums were lined up along the fence.

17 Q. And how were they arranged along the fence?

18 A. Right next to each other, neatly.

19 Q. In a row?

20 A. In a row.

21 Q. One deep?

22 A. One deep.

23 Q. All right.

24 How many were there?

1 A. Approximately 10 to 20.

2 Q. Same, 10 to 20?

3 A. (Witness nodded affirmatively.) Yes, sir.

4 Q. Did they have their lids on, or were they
5 unlidded? Did they have a top lid on, or they
6 didn't have a lid?

7 A. I don't understand that question because I
8 told you there was --

9 Q. A bung hole?

10 A. Yeah. And the type of barrel you're talking
11 about is different.

12 Q. All right.

13 A. If I'm not mistaken, you're making a mistake.

14 Q. Okay.

15 So, in other words, they had
16 tops; then you say the bung caps were missing?

17 A. Right.

18 Q. So they were sealed at both ends, these drums?

19 A. Wait a minute. You're making a mistake
20 again. Some had caps, and some didn't.

21 Q. Well, the ones that didn't have, how were they
22 arranged?

23 A. They were all in a line.

24 Q. No, no. All these tops, they all had ends?

- 1 A. You're talking about the tops of the barrels?
- 2 Q. Yes.
- 3 A. Yes.
- 4 Q. They all had them?
- 5 A. Yes.
- 6 Q. So they didn't have any lids that were
7 removed?
- 8 A. No.
- 9 Q. They didn't have lids?
- 10 A. They were all sealed. Bung holes.
- 11 Q. So there were no caps, covers, or lids on
12 these drums?
- 13 A. Some had them and some didn't.
- 14 Q. Some had caps, and some didn't have caps?
- 15 A. Right.
- 16 Q. Some had lids. Were any of the drums opened
17 when they were by the fence?
- 18 A. No. They all had covers on them.
- 19 Q. They all had covers?
- 20 A. Covers.
- 21 Q. Some had bung holes, and some didn't have bung
22 holes; is that right?
- 23 A. The covers -- The small covers were missing
24 from some of them, but the barrels were

1 intact.

2 Q. That's right.

3 A. Can I ask a question?

4 Q. Yes.

5 A. You're getting me confused.

6 Q. I don't want to do that, Mr. Barbas.

7 A. I know you don't.

8 Q. So, if I say anything that confuses you, you
9 let me know. Okay?

10 A. I think you're getting two kinds of barrels
11 mixed up. The barrel that's opened, like
12 somebody would put to collect rain.

13 Q. Um-hmm.

14 A. And then there's a barrel that's closed, that
15 has bung holes.

16 All I saw was barrels with bung
17 holes in the barrels, and some were missing.
18 I'm not talking about the tops.

19 Q. All right.

20 So, some had bung holes that
21 were filled in with their caps, and some had
22 bung holes that were opened because the caps
23 were missing?

24 A. Right, right.

- 1 Q. But all of them had covers -- All were covered
2 at each end?
- 3 A. Right. Top and bottom.
- 4 Q. And they were lined up again?
- 5 A. Yes.
- 6 Q. You went back inside the plant?
- 7 A. Yeah.
- 8 Q. Did you talk to anybody while you were out
9 there?
- 10 A. No.
- 11 Q. Did you see Frank Kelley and Joe Meola?
- 12 A. I don't remember.
- 13 Q. You went back to work?
- 14 A. Yes.
- 15 Q. What else happened that day?
- 16 A. Nothing irregular.
- 17 Q. Did you ever talk to Frank Kelley that day or
18 Joe Meola?
- 19 A. I don't remember.
- 20 Q. Did anyone fill in that excavated pit?
- 21 A. Yes.
- 22 Q. Who did?
- 23 A. I don't know who filled it in.
- 24 Q. When did it happen?

- 1 A. I'm not sure on the date. I'm not sure on the
2 date.
- 3 Q. Was it that day?
- 4 A. Could have been a couple of days afterwards.
5 I'm not sure on the date.
- 6 Q. Was there anything else, to your knowledge,
7 put into that pit?
- 8 A. To my knowledge, I don't know. I don't know
9 if anything else was put in there. When I saw
10 the pit, it was just solvents, paints, and a
11 few bung caps. I didn't see anything else.
- 12 Q. Did you ever see that pit before it was filled
13 in after you first observed it filled with
14 liquid?
- 15 A. I don't understand that question.
- 16 Q. All right.
- 17 At the time you saw it, when
18 you examined it and saw the bung caps, until
19 the time that it became covered over, --
- 20 A. Yes.
- 21 Q. -- did you ever see it again? Did you ever
22 look in it again?
- 23 A. No.
- 24 Q. Did you see anybody fill it in?

1 A. I did not see anybody fill it in.

2 Q. Did you see a truck out there or a backhoe out
3 there?

4 A. I don't remember seeing a truck or a backhoe.

5 MR. CHEESEMAN: You're asking
6 now in connection with filling it in
7 afterwards?

8 MR. SCHLICTMANN: Filling it
9 in, yes.

10 BY MR. SCHLICTMANN:

11 Q. Do you know how it was filled in?

12 A. No, I don't.

13 Q. Do you have any reason to believe, any
14 knowledge, from whatever source as to how it
15 was filled in?

16 A. Say that again?

17 Q. All right.

18 Do you have any reason to
19 believe how it was filled in from whatever
20 source?

21 A. No.

22 Q. Do you have any idea as to how it was filled
23 in?

24 A. I have an idea, but I don't know for sure.

1 Q. All right. What's your idea?

2 A. My idea is that it was filled in by heavy
3 machinery.

4 Q. Why? Why do you say that?

5 A. My own opinion is it's too deep of a hole for
6 someone to fill it in with a shovel. I would
7 say it would have to be machinery to fill it
8 in.

9 Q. How deep was the hole?

10 A. I'd say it was high as this. (Indicating.) I
11 would say --

12 Q. Are you saying --

13 A. 12 or 16 feet.

14 Q. 12 or 16 feet deep?

15 A. Yes.

16 Q. The bottom of that trench was, from the top of
17 the ground to the bottom was, 12 to 16 feet,
18 you think?

19 MR. SEGAL: Wait a minute.
20 You're not talking about trenches, here,
21 you're talking about pits?

22 MR. SCHLICTMANN: This
23 excavated area.

24 MR. SEGAL: I'll buy excavated

1 area.

2 MR. SCHLICTMANN: You want to
3 buy that one, I have another one to sell you.

4 MR. SEGAL: Okay. You don't
5 want to buy pit?

6 MR. SCHLICTMANN: I know the
7 Graces' are having a sale on them.

8 MR. CHEESEMAN: 16 feet is two
9 stories. You think it was that deep?

10 THE WITNESS: I said 12 to 16
11 feet.

12 MR. CHEESEMAN: Yes, I know.

13 BY MR. SCHLICTMANN:

14 Q. So, you think it was 12 to 16 feet, is that
15 right?

16 A. Approximately.

17 Q. It was very deep?

18 A. (Witness nodded affirmatively.)

19 Q. It was deeper than a man is tall?

20 A. Yes.

21 Q. That you're sure of?

22 A. Oh, I know it.

23 Q. Why do you say you know it?

24 A. Because nobody -- You know, the guys didn't

1 want to fall in it. It was deep. It would be
2 hard to get somebody out of there if they fell
3 in.

4 Q. You think it was at least two men tall?

5 A. I said 12 to 16 feet deep.

6 MR. CHEESEMAN: Two
7 six-footers?

8 BY MR. SCHLICHTMANN:

9 Q. At least two six-footers deep?

10 A. Yes.

11 Q. Now, if you were standing on one end like the
12 area where you were pouring the drums in, --

13 A. Yes.

14 Q. -- would you be able to jump across the
15 excavated area, you think, or was it really
16 wide?

17 A. No, you couldn't jump across.

18 Q. You couldn't jump across it?

19 A. No.

20 Q. Approximately how wide was it?

21 A. I think I stated before it was 20 X 40.

22 Q. So, it was about 20 feet wide?

23 A. (Witness nodded affirmatively.)

24 Q. All right.

1 Now, I'm going to say this room
2 is about 10 feet wide. All right.

3 MR. SEGAL: It's more. It's
4 more than that. About 18, in fact.

5 BY MR. SCHLICTMANN:

6 Q. Your attorney is going to tell you it's 18,
7 and I'm going to say --

8 MR. SEGAL: Why don't you
9 measure it.

10 MR. CHEESEMAN: Jan, lie down
11 on the floor.

12 BY MR. SCHLICTMANN:

13 Q. Let's say this room is 15 feet wide. Would
14 you say that looks about right?

15 A. It looks about right. I was estimating
16 before. I'm not a professional estimator of
17 distances.

18 Q. About, about. I understand that.

19 But this room is about, would
20 you say, about 15 feet wide?

21 A. Yes.

22 Q. All right.

23 Was that excavated area wider
24 than this room?

1 A. It's about the same -- same size.

2 Q. About the same width as this room?

3 A. Yes.

4 Q. So about 15 feet, you're saying?

5 A. (Witness nodded affirmatively.)

6 Q. Now, how many --

7 MR. SEGAL: Well, it's not
8 clear that it's 15 feet. It's about as wide
9 as this room. This room could be 18 feet; it
10 could be 12 feet. What he's saying is it is
11 about as wide as this room.

12 MR. SCHLICTMANN: I am trying
13 to get some idea.

14 MR. CHEESEMAN: Do you have a
15 tape measure in the office?

16 MR. SEGAL: Do you want me to
17 pace it off right now?

18 BY MR. SCHLICTMANN:

19 Q. Let me put it this way: Was the hole as wide
20 as this room is wide?

21 A. Yes.

22 Q. All right.

23 Do you think it was wider than
24 this room?

- 1 A. No.
- 2 Q. You don't think it was shorter than this room?
- 3 A. You said "wider"; I said "no."
- 4 Q. You don't think it was smaller than this room?
- 5 A. It could have been smaller.
- 6 Q. How much smaller?
- 7 A. A couple of feet.
- 8 Q. Just a couple of feet?
- 9 A. (Witness nodded affirmatively.)
- 10 Q. So you think it was approximately the width of
- 11 this room?
- 12 A. Yes.
- 13 Q. All right.
- 14 And what is your estimate about
- 15 the width of this room?
- 16 A. My estimate is 20 feet.
- 17 Q. You think this room is about 20 feet?
- 18 A. (Witness nodded affirmatively.)
- 19 Q. Okay.
- 20 Now, how many rooms long was
- 21 this excavated area; this room?
- 22 A. Two times.
- 23 Q. Two times this room?
- 24 A. Yes.

1 Q. Okay.

2 So you estimate this room about
3 20 feet, and it was at least twice as long as
4 the room?

5 A. (Witness nodded affirmatively.)

6 Q. Another 40 feet?

7 A. I said 20 X 40 before. I am still sticking by
8 it.

9 Q. Now, was the liquid -- Was this hole --

10 MR. CHEESEMAN: Excuse me just
11 a minute, Jan.

12 MR. SEGAL: Maybe this is a
13 good time to take a break for the
14 Stenographer.

15 [Recess held.]

16 MR. CHEESEMAN: Let me start
17 the resumed deposition by saying that I asked
18 one of Mr. Schlichtmann's secretaries to
19 provide me with a yardstick, a metal
20 yardstick, and I just measured the width of
21 the room that the witness was referring to,
22 and it is 15 feet exactly. I measured from
23 the video cabinet to the door to the room
24 which is what I understood the witness was

1 referring to. If he was referring to the
2 glass partition instead of the door in the
3 room, it would be 16 feet.

4 MR. SCHLICTMANN: All right.

5 Perhaps you want to ask him
6 what he was referring to.

7 A. I meant from there to the door. (Indicating.)

8 Q. To the door?

9 A. Yes.

10 Q. Okay.

11 So it's about 15 feet. Does
12 that seem about right to you?

13 A. Yes.

14 MR. SEGAL: In other words,
15 your testimony is the excavation was 15 feet
16 wide; not that the room is 15 feet wide, or
17 both?

18 THE WITNESS: Yes.

19 BY MR. SCHLICTMANN:

20 Q. And that it was twice as long as this room?

21 A. Yes.

22 Q. About 30 feet?

23 A. (Witness nodded affirmatively.)

24 Q. All right.

1 Now the liquid that came out of
2 the drums, what color was it? How would you
3 describe the liquid?

4 A. Dirty gray, dirty gray liquid.

5 Q. Did it have any material in it at all other
6 than liquid?

7 A. Some congealed paint; paint that's like gum.

8 Q. All right.

9 But it was mostly liquid?

10 A. Yes.

11 Q. And what was the color of the liquid at the
12 bottom of the pit when you saw it?

13 A. Gray.

14 Q. Did you see paint sludge in there, as well?

15 A. Yes.

16 Q. And you saw gray liquid?

17 A. Yes.

18 Q. Did the liquid cover the whole floor of the
19 pit?

20 A. No.

21 Q. All right.

22 How much of the floor of the
23 pit was covered by liquid?

24 A. Just a little bit. I couldn't tell the

1 amount; it was not that much.

2 Q. No. But how much area of the floor was
3 covered? Half the floor or the whole floor; a
4 quarter of the floor?

5 A. I'd say an area about 15 -- maybe a couple of
6 feet back you could see liquid. The amount,
7 I'm not too sure about. It was dirty.

8 Q. So you couldn't see the amount?

9 A. Right.

10 Q. So, it looked like it was a puddle down there?

11 A. Yes.

12 Q. And it was liquid, not solid?

13 A. Liquid and some congealed paint.

14 Q. All right.

15 And it was approximately the
16 width of this room and a few feet deep?

17 MR. CHEESEMAN: He indicated he
18 didn't know how deep it was.

19 MR. SCHLICTMANN: No, no. I
20 meant --

21 THE WITNESS: He's talking from
22 the edge.

23 I'm starting to understand him
24 now.

1 MR. CHEESEMAN: That's the
2 problem we have with your questioning, Jan.
3 You speak very quickly, and you use ambiguous
4 words, and I know you don't mean to do it.

5 MR. SEGAL: That's why we
6 corrected eight pages the last time.

7 BY MR. SCHLICTMANN:

8 Q. Mr. Barbas, describe the dimensions of this
9 puddle at the bottom of the pit?

10 A. 15 feet wide, and maybe a foot and a half
11 back.

12 Q. Could you tell if liquid had actually run
13 along the sides of the excavation as well?

14 A. Yes.

15 Q. And you could see to the bottom, --

16 A. No.

17 Q. -- you could see the bottom of the pit?

18 A. I couldn't see the bottom of the pit.

19 Q. Because it was covered with liquid?

20 A. Yes. Just the area in front of me.

21 Q. Now, was the excavation done straight down, or
22 did it come to a V?

23 A. I'm not too sure about that.

24 Q. Well let me ask you this: Was it as wide at

1 the top as it was at the bottom, or wide at
2 the bottom as it was at the top?

3 A. It was fairly jagged. It wasn't squared. You
4 know, it wasn't squared off like an
5 excavation.

6 Q. All right.

7 But did it taper down so
8 that --

9 How wide was the -- How wide
10 was the pit at the bottom, how many feet wide?

11 A. I'd say 15 feet.

12 Q. So it was almost as wide at the bottom as it
13 was at the top?

14 A. Yes.

15 Q. And do you know what instrument, what kind of
16 machine dug that pit?

17 A. No.

18 Q. You don't know if it was a backhoe or a front
19 loader or whether men had done it by hand?

20 A. I saw a backhoe in the vicinity of it, a
21 backhoe or a front-end loader. I get them
22 confused.

23 Q. All right.

24 Well, was this a fairly large

1 -- How would you describe the dimensions of
2 the machine?

3 A. The machine was the size of this room.

4 Q. All right.

5 We'll have to bring this room
6 into court.

7 A. Whatever the size of a backhoe or a front-end
8 loader is.

9 Q. Well, did it have a bucket in the front as
10 well as in the back?

11 A. Yes.

12 Q. It did?

13 A. (Witness nodded affirmatively.)

14 Q. Did you actually see it do any digging?

15 A. No. I saw it in the general area.

16 Q. Do you know what that machine was used for?
17 In other words, did you see it doing anything
18 in the back?

19 A. No.

20 Q. How long did it take, do you know, for that
21 hole, that excavation to have been dug?

22 A. I don't know.

23 Q. Do you know if it was done in a day or several
24 days?

1 A. I don't know.

2 Q. Where was the earth that was taken out of the
3 pit; where was that placed?

4 A. Piled along the side and the other side.

5 Q. And the other side?

6 A. Yes.

7 Q. Now, you were there when the second addition
8 was built, weren't you, the second addition to
9 the main building?

10 MR. SEGAL: I think he means
11 you were working for the company.

12 A. Yes.

13 MR. SEGAL: You didn't stay out
14 there and watch it.

15 BY MR. SCHLICTMANN:

16 Q. Are you familiar when that second addition was
17 built?

18 A. Yes.

19 Q. All right.

20 Now, how long after the second
21 addition was built, did you participate in the
22 pouring of these drums?

23 A. I'm not sure about that. I can't remember
24 something like that.

1 Q. All right.

2 Well, I want you to remember as
3 best you can. What do you remember about the
4 time relationship between the digging, the
5 pouring of those drums, and the construction
6 of the second addition?

7 A. The second addition was constructed -- it was
8 finished.

9 Q. Finished?

10 A. Yes.

11 Q. All right.

12 Had it been finished within --
13 is it months?

14 A. I'm not sure about that.

15 Q. All right.

16 Are you aware that the
17 construction took place in the late summer and
18 early fall?

19 A. No.

20 Q. Are you aware that the construction took place
21 in the summer?

22 A. I didn't know what season it was.

23 Q. This wasn't winter?

24 A. No.

1 Q. You think it was the fall?

2 A. Could have been.

3 Q. Do you think it was the summer?

4 A. Could have been.

5 Q. But you know it was after the construction of
6 the second addition?

7 A. Yes.

8 Q. Was it in the same year as the second
9 addition?

10 A. I don't know. It was around the end of the
11 construction.

12 Q. Now, was this front-end loader or this truck
13 that you saw, out there prior to your pouring
14 of the drums?

15 A. You said truck and front-end loader.

16 Q. How would you describe it.

17 MR. CHEESEMAN: You got to tell
18 him what you're talking about. The vehicle
19 that was used to move the drums or --

20 BY MR. SCHLICTMANN:

21 Q. No. The vehicle that you think was used to
22 dig the hole. How many days had you seen it
23 out in the back prior to the pouring of the
24 drums?

1 MR. SEGAL: This is the backhoe
2 we're talking about?

3 MR. SCHLICTMANN: Well, he
4 doesn't know if it was the backhoe, front-end
5 loader, or whatever.

6 A. Say that question again?

7 Q. How long had it been out there, the machine
8 been out there prior to your pouring of the
9 drums?

10 A. I'd say a couple of days.

11 Q. A couple of days?

12 A. Yes, approximately. I'm not sure.

13 Q. Was that machine out there the day that you
14 poured the drums into the pit?

15 A. I don't remember.

16 Q. You don't remember seeing it?

17 A. I don't remember seeing it.

18 Q. Do you remember that there was a machine there
19 or there wasn't a machine there the day that
20 you poured the drums?

21 A. Whatever you asked, I agree with you. I don't
22 know whether it was there or wasn't there.

23 Q. You don't have any memory of it being there?

24 A. No, I don't remember.

- 1 Q. But you do remember seeing it a couple of days
2 before you poured the drums?
- 3 A. Yes.
- 4 Q. Do you remember seeing it after the red truck
5 moved the drums?
- 6 A. No.
- 7 Q. You don't remember seeing it then?
- 8 A. (Witness nodded negatively.)
- 9 Q. Do you remember seeing it either the day that
10 you poured the drums or the day after?
- 11 A. I don't remember that.
- 12 Q. Do you remember seeing it any time after you
13 poured the drums?
- 14 A. No.
- 15 Q. The hole was not filled in the day before you
16 poured the drums?
- 17 A. No.
- 18 Q. You know that for a fact?
- 19 A. I know it for a fact.
- 20 Q. Why is that?
- 21 A. Because I went out there and looked at it.
- 22 Q. After all the pouring had been done?
- 23 A. Right.
- 24 Q. Was this near the end of the day?

- 1 A. Could have been near the end of the day.
- 2 Q. Did you happen to see the thing before you
3 finished work at the end of the day?
- 4 MR. SEGAL: The hole?
- 5 MR. SCHLICHTMANN: The pit.
- 6 A. Yeah. I would say it was before the end of
7 the day.
- 8 Q. All right.
9 And it hadn't been filled in?
- 10 A. It hadn't been filled in.
- 11 Q. Do you remember coming back the next day to
12 work?
- 13 A. No.
- 14 Q. Do you remember seeing it? Was it filled in
15 the next day or the day after?
- 16 A. I don't remember when it was filled in.
- 17 Q. Do you have any idea how many days after?
- 18 A. No.
- 19 Q. Do you think it was the next day?
- 20 A. It could have been. I'm not sure of that.
21 I'm not sure.
- 22 Q. Now, the drums that had been emptied, --
- 23 A. Yes.
- 24 Q. -- they were put back along the fence?

1 A. Yes.

2 Q. Whatever happened to those drums?

3 A. They disappeared.

4 Q. All right.

5 When did they disappear?

6 A. Shortly thereafter.

7 Q. All right.

8 What do you mean by "shortly
9 thereafter"?

10 A. I'd say a couple of days later.

11 Q. A couple of days later the drums were gone?

12 A. Yes.

13 Q. What happened to the drums?

14 A. I don't know.

15 Q. All right.

16 Now, Mr. Barbas, I'm going to
17 ask you to search your mind. I want you to
18 think back, and I want to ask you: Do you
19 have any idea -- from whatever source -- do
20 you have any idea as to what happened to those
21 drums that you had poured into the pit? Now,
22 I want you to think about it and tell me as
23 best you can, from whatever source, whatever
24 happened, whether you have any idea what

1 happened to those drums.

2 MR. SEGAL: Do you understand
3 the question?

4 THE WITNESS: (To Attorney
5 Segal) Can I talk to you?

6 MR. SEGAL: Yes.

7 [Whereupon, the witness
8 conferred with Attorney Segal.]

9 A. I have no first-hand knowledge.

10 Q. You have an idea, though, don't you?

11 A. I have an idea.

12 Q. All right.

13 What's your idea?

14 A. I heard that a metal salvage company came and
15 took the drums away.

16 Q. All right.

17 Who did you hear that from?

18 A. I don't remember that. It was somebody in the
19 shop.

20 Q. Who?

21 A. I said I don't know.

22 Q. And when did they tell you this?

23 A. It could have been around that time, but I
24 also heard it recently.

1 Q. All right.

2 When did you hear it recently?

3 A. Maybe a couple of months back. I don't know
4 who told me.

5 Q. Was it the same person who told you previously
6 who told you --

7 A. No, I don't think so.

8 Q. Another person?

9 A. I don't know who the person was. I forget.

10 Q. Somebody around the time you poured the drums,
11 sometime after, told you that the drums had
12 been taken by a salvage company?

13 A. Yes.

14 Q. Was that Richardsons?

15 A. I'm not sure of that.

16 Q. Do you know which salvage company would have
17 done it?

18 A. No. I just know somebody came and took the
19 drums away.

20 Q. All right.

21 Now, you said a couple of
22 months ago somebody else told you the same
23 thing?

24 A. Yes.

1 Q. All right.

2 How did you come to have that
3 conversation?

4 A. People were talking about the case, and
5 somebody said that they were trying to find
6 out how the barrels left the company after
7 they were emptied.

8 Q. Yes?

9 MR. CHEESEMAN: Was this a
10 conversation with the company lawyers
11 involved?

12 THE WITNESS: Yeah. Company
13 lawyers.

14 MR. CHEESEMAN: It sounds like
15 it is a privileged conversation.

16 BY MR. SCHLICTMANN:

17 Q. Was this a conversation which took place in
18 the presence of your attorney?

19 MR. CHEESEMAN: You're asking
20 about the company's attorneys?

21 MR. SCHLICTMANN: Yes. Well,
22 his attorney.

23 MR. SEGAL: Let's do it this
24 way.

1 MR. SCHLICTMANN: No.

2 MR. SEGAL: Who was present
3 when the conversation about where the drums --
4 BY MR. SCHLICTMANN:

5 Q. This conversation that you just talked about,
6 was this in the presence of your attorney?

7 MR. SEGAL: I'm an attorney,
8 and he's an attorney. (Indicating.)

9 MR. SCHLICTMANN: His
10 attorney.

11 MR. CHEESEMAN: I'm going to
12 assert the company's privilege.

13 MR. SCHLICTMANN: It's his
14 privilege to assert.

15 MR. CHEESEMAN: No, it isn't.
16 It's my privilege to assert.

17 MR. SEGAL: He's entitled to
18 ask who was present, and we'll sort it out
19 from there.

20 BY MR. SCHLICTMAN:

21 Q. Who was present at the conversation?

22 THE WITNESS: (To Attorney
23 Segal) Can I talk to you?

24 [Whereupon, the witness

1 conferred with Attorney Segal.]

2 MR. SEGAL: Just tell him who
3 was present, and we'll sort it out.

4 BY MR. SCHLICTMANN:

5 Q. Who was present?

6 MR. CHEESEMAN: By name, if you
7 can.

8 A. Bill Cheeseman and Mark Stoller.

9 MR. CHEESEMAN: Stoller.

10 S-T-O-L-L-E-R.

11 BY MR. SCHLICTMANN:

12 Q. And who else?

13 A. I believe that's it. I could be mistaken.

14 Q. All right.

15 MR. CHEESEMAN: Based on that,
16 I will object and instruct the witness not to
17 answer as to anything that was said during
18 that conversation.

19 BY MR. SCHLICTMANN:

20 Q. Were these attorneys who represented you at
21 the time?

22 MR. CHEESEMAN: I'll answer
23 that for you. Either Mr. --

24 MR. SCHLICTMAN: No. He's the

1 witness.

2 MR. SEGAL: I don't think he's
3 competent to answer that.

4 MR. SCHLICTMAN: He's not
5 competent to know who's representing him?

6 MR. CHEESEMAN: I don't think
7 that Judge Skinner is going to want to listen
8 to this bologna.

9 I represent W. R. Grace, and
10 Mark Stoller is a company -- employed by W. R.
11 Grace representing the company in the defense
12 of this lawsuit in related legal matters. And
13 conversations that we've had interviewing
14 employees of the company and discussing the
15 case with employees of the company are
16 privileged attorney/client communications.
17 The privilege is Graces' to assert, and I'm
18 asserting it. It is also work product.

19 MR. SCHLICTMAN: Right.

20 BY MR. SCHLICTMANN:

21 Q. Now, I want to know, Mr. Barbas, at the time
22 of this conversation, were you then
23 represented by Mr. Cheeseman and Mr. Stoller?

24 MR. CHEESEMAN: He is not

1 personally represented by either Mr. Stoller
2 or myself and has not been.

3 BY MR. SCHLICTMANN:

4 Q. So, you were not represented by Mr. Cheeseman
5 or Mr. Stoller when you had the conversation;
6 is that right?

7 MR. CHEESEMAN: I will continue
8 to give you the details of this arrangement.
9 I represent the company, not any of its
10 individual employees.

11 MR. SEGAL: He's going to
12 answer it. Go ahead and answer it.

13 BY MR. SCHLICTMANN:

14 Q. Answer it.

15 MR. SEGAL: You can answer it.

16 A. Terry Segal's my lawyer now, but the
17 conversation happened before he was my
18 lawyer.

19 Q. I understand.

20 So, Mr. Barbas, all I'm asking
21 is a very simple question.

22 A. I know you're asking me a simple question.

23 Q. It is a simple one: At the time of this
24 conversation with Mr. Stoller and Mr.

1 Cheeseman, was it your understanding that you
2 were being represented by them?

3 MR. SEGAL: Personally?

4 MR. SCHLICTMANN: Yes.

5 MR. SEGAL: Well it's two
6 capacities: in a corporate capacity and
7 personal.

8 MR. SCHLICTMAN: Well, whatever
9 capacity.

10 BY MR. SCHLICTMAN:

11 Q. Do you believe that you were represented by
12 Mr. Cheeseman and Mr. Stoller? At the time
13 you had this conversation, were they your
14 attorneys?

15 MR. SEGAL: Did you believe
16 them to be your attorneys?

17 MR. CHEESEMAN: If he had an
18 understanding; if he gave thought to it and
19 had understanding as to whether there was a
20 difference between representing --

21 Do you want to go and see the
22 judge right now? This is absurd (absurd?).
23 You can't have any testimony from this witness
24 about conversations with me in preparation for

1 the case.

2 BY MR. SCHLICTMANN:

3 Q. If you believe they were your attorneys, you
4 can tell me they were your attorneys.

5 A. Can I just say one thing?

6 Q. Yes, sure. Go ahead.

7 A. Can I just talk to him for one second?

8 (Indicating.)

9 Q. Sure.

10 [Whereupon, the witness
11 conferred with Attorney
12 Cheeseman.]

13 A. I knew he was the company attorney; I didn't
14 know he was my own attorney, personally. He
15 was the company attorney.

16 MR. SEGAL: He's referring to
17 Mr. Cheeseman.

18 A. Yeah, Mr. Cheeseman and Mr. Stoller.

19 Q. At the time of the conversation, you didn't
20 believe you were being represented by Mr.
21 Cheeseman and Mr. Stoller; is that right?

22 MR. CHEESEMAN: Personally.

23 BY MR. SCHLICTMANN:

24 Q. They didn't represent you as an attorney, in

1 whatever capacity, they were not your
2 attorney?

3 MR. CHEESEMAN: He's just said
4 he understood we were company attorneys.

5 MR. SEGAL: That's a legal
6 conclusion. He could assume that the company
7 attorney was also representing him. He said,
8 "I thought they were representing the
9 company."

10 A. It could have been a mistake on my part.

11 Q. Mr. Barbas, was it your understanding that Mr.
12 Stoller and Mr. Cheeseman were representing
13 you?

14 A. No. They were representing the company.

15 Q. All right.

16 You did not have an
17 attorney/client relationship at the time? In
18 your understanding, did you have an
19 attorney/client relationship with Mr. Stoller
20 and Mr. Cheeseman at the time of this
21 conversation?

22 MR. CHEESEMAN: You're asking
23 about him, personally?

24 BY MR. SCHLICTMANN:

1 Q. Yes, you.

2 MR. SCHLICTMANN: No. I'm
3 asking if he had an attorney/client
4 relationship.

5 MR. CHEESEMAN: As an employee
6 or individually?

7 MR. SCHLICTMANN: Or whatever.
8 Whatever capacity.

9 A. I thought they were the company lawyers.

10 MR. SEGAL: He's answered it as
11 best he can.

12 BY MR. SCHLICTMANN:

13 Q. Were they --

14 THE WITNESS: (To Attorney
15 Cheeseman) Can we go off the record for a
16 second?

17 MR. CHEESEMAN: No.

18 MR. SCHLICTMANN: No,
19 unfortunately.

20 MR. SEGAL: We can go around on
21 this but --

22 MR. SCHLICTMAN: It may become
23 very important.

24 MR. SEGAL: I've written an

1 article in the Hickman case. It's very clear
2 whether they were there representing him or
3 the company that it's a work/product
4 situation, never mind the attorney/client
5 privilege. And why are we spending all this
6 time on it?

7 MR. SCHLICTMANN: No. Mr.
8 Barbas is a witness. And Mr. Barbas is now a
9 witness; he is under an obligation to testify
10 under oath. Any work product that Mr.
11 Cheeseman's office has an obligation to
12 assert, and he has a right to assert, but Mr.
13 Barbas is a witness. He has an obligation to
14 tell the truth. He has no obligation to
15 divulge any confidences which he gave his
16 attorney, and I want to --

17 MR. CHEESEMAN: Or the company
18 attorney.

19 MR. SCHLICTMAN: No. I don't
20 care whose attorney.

21 MR. CHEESEMAN: Well, I do.

22 MR. SEGAL: Jan, let me do
23 this. The point is, you would agree with me
24 if Mr. Cheeseman was there in connection with

1 preparing for this suit or defending, you'll
2 agree with that?

3 MR. SCHLICTMANN: Sure.

4 MR. SEGAL: If Mr. Cheeseman
5 said to Mr. Barbas tomorrow, will you please
6 write out everything that happened on the day
7 in question, and tomorrow Barbas wrote a memo
8 to Bill Cheeseman what happened, that memo
9 under the Work Product Doctrine would not be
10 producible. If that isn't producible, how can
11 you then go behind it and get the
12 conversations?

13 MR. SCHLICTMAN: Let's go off
14 the record here.

15 [Whereupon, an off-the-record
16 conference was held.]

17 BY MR. SCHLICTMANN:

18 Q. Did you ever note the condition of the pit
19 prior to your pouring liquid into it; was it
20 dry or wet?

21 A. I don't remember that.

22 Q. If you were to take us out -- If you were to
23 be taken out to the rear of the plant now,
24 would you be able to point out where that

1 trench was or -- excuse me -- where that
2 excavated area was; would you be able to point
3 it out, do you think?

4 A. Yes.

5 Q. You'd be able to do that right now?

6 A. Yes.

7 MR. SEGAL: Wait a minute.
8 [Whereupon, Attorney Segal
9 conferred with the witness.]

10 MR. SEGAL: Go ahead. He's
11 going to answer that question.

12 A. I could pick the general area.

13 Q. You could?

14 A. Yes.

15 Q. All right.

16 I'm going to show you a
17 photograph and ask that you examine that.
18 That's an aerial photograph taken of the
19 plant.

20 [Whereupon, a photograph was
21 tendered to the witness for
22 examination.]

23 MR. SEGAL: Could we mark that
24 as an exhibit just so we all talk about the

1 same thing?

2 MR. SCHLICTMAN: Yes. Why
3 don't you make it Barbas Exhibit No. 2?

4 [Whereupon, a photograph dated
5 3/15/74 was marked as Exhibit 2
6 to the Barbas deposition.]

7 BY MR. SCHLICTMAN:

8 Q. Mr. Barbas, Exhibit No. 2 is an aerial
9 photograph of the plant taken in March of
10 1974.

11 Have you had an opportunity to
12 examine that?

13 MR. SEGAL: I think the
14 question is: Have you looked at this
15 exhibit?

16 BY MR. SCHLICTMANN:

17 Q. Are you able to pick out the Grace plant on
18 that photograph?

19 A. It's this area, here. This is the warehouse;
20 this is the parking lot; this is Washington
21 Street.

22 Q. Okay.

23 Can you pick out the rear of
24 the plant on that?

1 A. (Witness indicating.)

2 Q. Can you see the asphalt area to the rear of
3 the plant?

4 A. It's this, here. (Indicating.)

5 Q. Okay.

6 Can you see the first addition
7 that was built on the plant? Is that obvious
8 to you in looking at that photograph?

9 A. I think the first addition is --

10 MR. CHEESEMAN: This photograph
11 is taken before the second addition was
12 built.

13 A. Okay, so this is really the first addition.

14 Q. That's right. That's what I said.

15 MR. SEGAL: This purports to be
16 a photograph taken in 1974, Tom, before the
17 second addition was built.

18 BY MR. SCHLICTMANN:

19 Q. In looking at that photograph, does that look
20 like the way the building -- you remember the
21 building looking before they built the second
22 addition?

23 A. Yes.

24 Q. That's what it looked like before they added

1 the first addition on it?

2 A. Yeah.

3 Q. Now, when you poured those drums, the building
4 didn't look like that, is that right?

5 A. No.

6 Q. Is that right?

7 Have you had an opportunity to
8 examine an aerial photograph showing the plant
9 after the second addition was built?

10 A. I've seen so many pictures, now I don't -- not
11 only in here but at -- in the plant, because
12 there's pictures on the walls. I don't want
13 to get confused.

14 Q. I understand.

15 In the last couple of months,
16 have you been shown an aerial photograph
17 showing the W. R. Grace plant after the
18 construction of the second addition?

19 A. I believe I have.

20 Q. All right.

21 I'm going to show you an aerial
22 photograph and ask that you examine that.

23 [Whereupon, a photograph was
24 tendered to the witness for

1 examination.]

2 MR. SEGAL: Do you want to mark
3 this as an exhibit also?

4 MR. SCHLICTMAN: Yes, let me
5 just have him examine it first.

6 MR. SEGAL: Okay.

7 MR. SCHLICTMANN: Now, -- Why
8 don't we have that marked as Barbas Exhibit
9 No. 3?

10 [Whereupon, a photograph dated
11 10/7/75 was marked as Exhibit 3
12 to the Barbas deposition.]

13 BY MR. SCHLICTMANN:

14 Q. Now, do you recognize Barbas Exhibit No. 3 as
15 a picture of the Grace plant after the
16 construction of the second addition?

17 A. Yes.

18 Q. All right.

19 When you poured the drums into
20 that pit, did the area to the rear of the
21 plant look essentially like it does in that
22 aerial photograph?

23 MR. SEGAL: We're talking about
24 Exhibit 3?

1 MR. SCHLICTMANN: Yes.

2 MR. CHEESEMAN: As those
3 aerials that you saw at that time. You can
4 answer.

5 A. Yes.

6 Q. Does it?

7 A. It looks like it.

8 MR. SEGAL: Just for the
9 record, Exhibit 3 is marked, I guess, 10/7/75,
10 and Exhibit 2 is sometime in '74.

11 MR. SCHLICTMANN: Right.

12 MR. CHEESEMAN: March 15, '74.

13 MR. SCHLICTMANN: Why don't we
14 mark this Barbas Exhibit No. 4. Why don't you
15 take a look at that one while I'm getting the
16 other one.

17 MR. SEGAL: Do you want to
18 describe it also?

19 MR. CHEESEMAN: This is dated
20 March 26th, 1966. Picture 4 is dated March
21 26, 1966.

22 [Whereupon, a photograph dated
23 3/26/66 was marked as Exhibit 4
24 to the Barbas deposition.]

1 MR. SCHLICHTMANN: Why don't we
2 have that one marked as 5 or --

3 MR. CHEESENAN: Five, isn't
4 it. This one's dated April 11th, 1975.

5 [Whereupon, a photograph dated
6 4/11/75 was marked as Exhibit 5
7 to the Barbas deposition.]

8 BY MR. SCHLICHTMANN:

9 Q. Now, Mr. Barbas, I'm going to ask you to
10 examine Barbas Exhibit 5.

11 Does that appear to you to be
12 what the Grace plant looked like after the
13 construction of the second addition?

14 [Whereupon, a photograph was
15 tendered to the witness for
16 examination.]

17 A. Yes.

18 Q. All right.

19 Now, I want you to examine the
20 area to the rear of the plant as depicted on
21 that photograph.

22 A. Right in this area? (Indicating.)

23 Q. The whole area.

24 Is that the area the way it

1 looked at the period of time that you poured
2 the drums into the pit, or was it different?

3 MR. CHEESEMAN: You can answer
4 as to those portions of the photograph that
5 you actually observed at the time.

6 MR. SCHLICTMANN: Right.

7 A. I don't remember if I looked at it at that
8 time.

9 Q. All right.

10 Now, would you be able in
11 examining that -- Barbas Exhibit No. 5 --
12 would you be able to indicate on that
13 photograph where the pit was that you poured
14 these drums?

15 A. Yes. I think I can do it.

16 Q. I think we're going to use a red magic marker
17 here.

18 Would you mark the pit in the
19 approximate dimensions of it on that
20 photograph?

21 MR. SEGAL: That's Exhibit 5.

22 A. This is approximate.

23 Q. Yes, I understand. As best you can.

24 A. Before I do anything, is there supposed to be

1 a road in the back here? (Indicating.)

2 Q. Yes, that's the asphalt.

3 A. This dark area is the asphalt?

4 Q. Right.

5 MR. CHEESEMAN: Well, the
6 witness is having trouble interpreting the
7 aerial photograph, and I think that's a
8 problem in all of these cases because the
9 angles are wrong and the detail on the ground
10 is --

11 MR. SCHLICTMANN: The witness
12 has told me that he can do it.

13 A. You know why I'm saying that, because you say
14 it's asphalt. This is supposed to be asphalt
15 here. It doesn't look like the same --

16 Q. I understand.

17 What I'm saying is, indicate
18 where the pit was and the dimensions of the
19 pit.

20 MR. CHEESEMAN: If you feel you
21 can do it with reasonable certainty, by all
22 means do so.

23 A. I have an idea. It's this area, here.

24 (Indicating.)

1 Q. All right. Put it down.

2 Well --

3 MR. CHEESEMAN: I think maybe
4 we're not going to be able to do this.

5 MR. SCHLICTMANN: Mr. Barbas
6 has indicated on the thing he's indicated on
7 the photo.

8 BY MR. SCHLICTMANN:

9 Q. As best you can, Mr. Barbas.

10 MR. SEGAL: He said, "I think I
11 can do it," then he starts to look at it, and
12 he has trouble because he can't relate certain
13 things to --

14 BY MR. SCHLICTMANN:

15 Q. Mr. Barbas, would you please indicate on that
16 photograph where you just indicated you think
17 you can do it?

18 MR. CHEESEMAN: If you think
19 you can do it.

20 A. It's an approximation.

21 Q. Exactly. It's an approximation.

22 MR. SEGAL: Looking at Exhibit
23 5, do you have a feeling where the pit is?

24 BY MR. SCHLICTMANN:

1 Q. Mr. Barbas, did you just not indicate to us --

2 MR. SEGAL: Never mind what he
3 did.

4 BY MR. SCHLICHTMANN:

5 Q. Did you just indicate where the pit was?

6 MR. SEGAL: That's before --

7 A. If you're telling me this is an asphalt
8 area, --

9 Q. Yes.

10 MR. SEGAL: It doesn't look
11 like one.

12 A. If you want to come over here for a second,
13 because this doesn't look like asphalt. I
14 don't mean to -- You know what I mean?

15 Q. I understand.

16 I want you to assume that this
17 black area here to the rear of the plant is
18 asphalt and that's a concrete pad.
19 (Indicating.)

20 MR. CHEESEMAN: If I may ask,
21 sir, some further guidance. Jan, there's a
22 dark area running along the back of the --
23 behind along the fence in a fairly distinct
24 sharp line where it goes to a light color

1 area. Are you asking the witness to assume
2 that that straight line, that is the edge of
3 the pavement on the road?

4 MR. SCHLICTMANN: Yes.

5 MR. CHEESEMAN: (To the
6 witness) With that understanding, if you can
7 indicate approximately where you think the pit
8 was, do so.

9 THE WITNESS:

10 A. I would say this area here. (Indicating.)

11 MR. SEGAL: So, you draw a
12 rectangle on Exhibit 5.

13 BY MR. SCHLICTMANN:

14 Q. All right.

15 MR. CHEESEMAN: Just note that
16 he's drawn the rectangle just adjacent to the
17 paved area where his testimony was it was 30
18 feet back from the area. Maybe he should
19 clarify that for the record.

20 BY MR. SCHLICTMANN:

21 Q. Indicate as best you can.

22 [Whereupon, the witness so
23 complied.]

24 A. Say this area here. (Indicating.)

1 MR. SEGAL: So the record is
2 clear, why don't you sketch in the area you
3 think the pit was because we've got a couple
4 of drawings here.

5 So, the filled-in rectangle is
6 the area you believe the pit is?

7 THE WITNESS: Yes.

8 MR. SEGAL: Okay.

9 BY MR. SCHLICTMANN:

10 Q. Why don't you write the word "pit".

11 [Whereupon, the witness so
12 complied.]

13 BY MR. SCHLICTMANN:

14 Q. And put an arrow from the word "pit".

15 [Whereupon, the witness so
16 complied.]

17 BY MR. SCHLICTMANN:

18 Q. Do I take it, then, that the way you have
19 drawn it indicates the length of the pit in
20 relationship to the main building?

21 A. It's approximate. I'm just --

22 Q. I understand.

23 A. -- showing --

24 Q. I want you to think back now. All right.

1 You've put down the area where
2 you think the pit was dug; is that right?

3 A. Yes.

4 Q. And you made a rectangle?

5 A. Yes.

6 Q. And the way that rectangle was made, you got
7 the longest part of the rectangle going in the
8 direction of the main building; is that right?

9 MR. CHEESEMAN: Perpendicular
10 to the back of the building.

11 A. Yeah. From where I was, I was facing 93. I
12 was looking out -- there's 93 looking out this
13 way. (Indicating.)

14 Q. Exactly.

15 A. Okay?

16 Q. Yeah.

17 A. That's how I interpreted it.

18 Q. I understand. But what I'm getting at, you
19 indicated that it was a rectangular excavated
20 area; is that correct?

21 A. Yes.

22 Q. And you have drawn a rectangular excavated
23 area on this photograph?

24 A. Yes.

1 Q. Is it fair to say that the rectangular
2 excavated area, the way that you have drawn
3 it, the width faces the warehouse, and the
4 length faces the main building?

5 MR. CHEESEMAN: Well, that
6 confuses me. That's just the opposite of the
7 way I see it.

8 A. The way it is, that's how I saw it.

9 Q. I understand.

10 MR. CHEESEMAN: It was drawn --
11 the long direction oriented in an east-west
12 direction.

13 A. Yeah, the long direction. The short direction
14 faces 93.

15 MR. CHEESEMAN: You mean the --

16 MR. SEGAL: The record reflects
17 what it reflects.

18 BY MR. SCHLICHTMANN:

19 Q. Put an L at the long dimensions, and put a W
20 where the width was; all right.

21 [Whereupon, the witness so
22 complied.]

23 A. Okay? That's how I saw it as.

24 Q. So the length --

1 MR. CHEESEMAN: We all
2 understand that.

3 BY MR. SCHLICTMANN:

4 Q. Now, indicate on that photograph where the
5 drums were laid down for the pouring?

6 A. It will be this area here. (Indicating.)

7 Q. Put circles for drums.

8 [Whereupon, the witness so
9 complied.]

10 A. Something like that?

11 Q. Yes. Okay.

12 And you've drawn some circles
13 on the asphalt?

14 A. Well, down a little bit.

15 Q. How many feet from the asphalt?

16 A. Well 30 feet, 30 feet from the asphalt.

17 Q. You can indicate on that one where the drums
18 were stored, right? (Indicating.)

19 MR. CHEESEMAN: Before they
20 were carried over to be dumped?

21 MR. SCHLICTMANN: That's
22 right. Before they were carried over to be
23 dumped.

24 BY MR. SCHLICTMANN:

1 Q. Where were they stored before they were
2 carried over to be dumped?

3 A. This is the fenced area.

4 Q. I'm going to ask you to use another color.

5 Draw in blue where the drums
6 were stored prior to their being moved.

7 [Whereupon, the witness so
8 complied.]

9 A. Something like that.

10 Q. All right.

11 So you have placed those drums
12 being stored on the asphalt to the rear of the
13 plant?

14 A. Yeah, against the fence?

15 Q. Against the fence.

16 A. That's supposed to be a fence there; that's
17 why I put them there. I think it's a fence.
18 (Indicating.)

19 Q. Why don't you draw in on the diagram the
20 dimensions of the fenced-in area in blue.

21 [Whereupon, the witness so
22 complied.]

23 BY MR. SCHLICTMANN:

24 Q. All right.

1 Why don't you darken in those
2 circles so it will be a little clearer.

3 [Whereupon, the witness so
4 complied.]

5 BY MR. SCHLICTMANN:

6 Q. Why don't you put a D, the letter D, next to
7 the side over here so we know that those are
8 the drums. (Indicating.)

9 [Whereupon, the witness so
10 complied.]

11 BY MR. SCHLICTMANN:

12 Q. Okay. All right.

13 Now, approximately how far were
14 the drums taken to where the pit was, how many
15 feet?

16 A. About 60 feet.

17 Q. 60 feet. About three times the width of this
18 room?

19 A. Four.

20 Q. Four times the width of this room?

21 A. Yes.

22 Q. Now, I want you to examine this photograph.

23 Let me ask you this: At the
24 time that the pit was excavated, the asphalt

1 was down; is that right?

2 A. I don't --

3 MR. CHEESEMAN: What do you
4 mean?

5 MR. SCHLICTMANN: The asphalt
6 to the rear of the plant.

7 MR. CHEESEMAN: You're asking
8 if there was a paved area?

9 MR. SCHLICTMANN: Yes.

10 BY MR. SCHLICTMANN:

11 Q. Was there a paved area?

12 A. I don't remember that.

13 Q. You don't remember that.

14 So, you don't think the paved
15 area was on there?

16 A. I can't say for sure.

17 Q. Is it fair to say that it was after the
18 construction of the second addition, but it
19 was before you poured the drums into the
20 excavated area?

21 A. I'm not sure.

22 Q. Do you think that's possible?

23 A. It's possible.

24 Q. How would you describe the weather on that

1 day? Was it hot, or was it cold, or how would
2 you describe it?

3 MR. SEGAL: This is the day the
4 drums were poured?

5 BY MR. SCHLICTMANN:

6 Q. You poured the drums into the pit?

7 MR. SEGAL: If you have any
8 recollection.

9 A. The only recollection that I have was the mud
10 was a little -- that the ground was damp and
11 muddy. The weather was, I think, clear.

12 Q. But it wasn't summer-type weather?

13 A. I'm not sure about the season.

14 Q. You don't think you took your shirt off
15 because it was hot out there?

16 A. No.

17 Q. It wasn't that kind of weather?

18 A. (Witness nodded negatively.)

19 Q. Do you know anyone else working with you who
20 took their shirt off because it was hot?

21 A. I don't remember that.

22 Q. Now, Mr. Barbas, are you sure that that pit
23 that you poured the drums into was excavated
24 after the second addition was completed?

1 A. Am I sure?

2 Q. Yes.

3 A. I'm not sure.

4 Q. Do you think it happened before the second
5 addition was built?

6 MR. SEGAL: "Happened," you
7 mean the pit was dug?

8 BY MR. SCHLICTMANN:

9 Q. That the pit was dug, and you poured the drums
10 into the pit prior to that second addition
11 being built.

12 A. Can you state that first question again
13 because I'm missing --

14 Q. Let me ask you this way: I want you to
15 examine Barbas Exhibit No. 2 which shows the
16 plant with the first addition but without the
17 second addition.

18 [Whereupon, the photograph was
19 tendered to the witness for
20 examination.]

21 BY MR. SCHLICTMANN:

22 Q. Do you notice on there, there's a ditch that
23 runs along the warehouse?

24 A. This here? (Indicating.)

1 Q. Yes.

2 A. Okay.

3 Q. All right.

4 And do you note that in the
5 Barbas Exhibit No. --

6 MR. SCHLICTMANN: Is that 6 or
7 5?

8 MR. SEGAL: Yes, 5.

9 BY MR. SCHLICTMANN:

10 Q. -- 5 that that ditch along the warehouse has
11 been filled in?

12 A. Oh, yeah, I notice that.

13 Q. Now, do you remember whether that ditch along
14 the warehouse had been filled in at the time
15 that you poured those drums into the pit that
16 you described?

17 A. I don't remember that.

18 Q. All right.

19 Now, in examining Barbas
20 Exhibit No. 2 -- This is the photograph taken
21 prior to the building of the second addition.

22 MR. SEGAL: It's in '74.

23 BY MR. SCHLICTMANN:

24 Q. All right.

1 -- would you be able to
2 indicate on that diagram --

3 Which is a better photograph
4 for you to place that best describes how the
5 place looked when you poured those drums into
6 the pit, Barbas Exhibit No. 2, which was taken
7 before the second addition was built, or
8 Barbas Exhibit No. 5, which was taken after
9 the second addition was built? I want you to
10 examine both of them carefully and tell me
11 which one shows the area better as to how it
12 looked when you poured the drums into the
13 pit.

14 A. This area. This photograph here. It's more
15 clear except for the paved area.
16 (Indicating.)

17 MR. SEGAL: He's referring to
18 Exhibit 5.

19 MR. CHEESEMAN: I don't think
20 Mr. Schlichtmann asked you which is better for
21 the photographic quality.

22 (To Attorney Schlichtmann) I
23 don't think he understands your question, Jan,
24 and I'll object to it being ambiguous. What

1 you mean, I think, is which of these
2 photographs more accurately portrays the
3 configuration of the building at the time.

4 BY MR. SCHLICTMANN:

5 Q. That's right.

6 Which of these photographs
7 better shows the way the building and the area
8 behind the building looked when you poured the
9 drums into the pit?

10 A. I would say this one. (Indicating.)

11 Q. All right.

12 MR. SEGAL: Exhibit 5.

13 MR. CHEESEMAN: He's referring
14 to Exhibit 5.

15 BY MR. SCHLICTMANN:

16 Q. Now, tell me the reasons why Exhibit 5 is a
17 picture which better shows the way the area
18 looked; explain all the reasons to me.

19 A. My reason is that the building is there, the
20 second, and it shows how much closer it is to
21 the warehouse.

22 Q. All right.

23 So, the significant thing for
24 you in Exhibit No. 2 is the fact that the

1 second addition is on there and it's much
2 closer to the warehouse?

3 A. Yes.

4 Q. So that's --

5 MR. SEGAL: No, Exhibit 5, I
6 think he said.

7 MR. SCHLICTMANN: I'm sorry. I
8 meant Exhibit 5.

9 MR. CHEESEMAN: Referring to
10 Exhibit 5.

11 MR. SCHLICTMANN: Let me do it
12 again.

13 BY MR. SCHLICTMANN:

14 Q. The reason that you chose Exhibit 5 to show
15 what the area looked like on a day that you
16 poured the drums into the pit is because
17 Exhibit 5 shows the second addition, and the
18 second addition is close to the warehouse?

19 A. Yes.

20 Q. And you remember that the building was as
21 close to the warehouse as shown on Exhibit 5
22 than it is as depicted in Exhibit No. 2?

23 A. Yes.

24 Q. Now, the red truck that moved the drums, did

1 that --

2 Did you actually see the red
3 truck move the drums?

4 A. No. I saw a red truck that they were putting
5 a couple of drums onto.

6 Q. All right.

7 And you never saw that red
8 truck again?

9 A. I don't think so.

10 Q. I mean, it's not a red truck that you
11 recognize as belonging to the plant or
12 belonging to any employee?

13 A. No.

14 Q. So, as far as you were concerned, it was
15 brought in especially to move the drums?

16 MR. CHEESEMAN: I object.

17 BY MR. SCHLICTMANN:

18 Q. Well, your understanding. Is that your
19 understanding?

20 MR. SEGAL: Well, how would he
21 know?

22 BY MR. SCHLICTMANN:

23 Q. Did you have an understanding why the truck
24 was being used and where it came from?

1 MR. CHEESEMAN: Object. It's a
2 double question. Go ahead.

3 A. Say that one again?

4 Q. Yes.

5 In other words, did you
6 recognize this truck as something that the
7 Grace plant used on occasion to do work around
8 there or was it specially brought in?

9 MR. CHEESEMAN: Objection.

10 MR. SEGAL: That's not --

11 BY MR. SCHLICTMANN:

12 Q. Your understanding.

13 MR. SEGAL: No, no. Let's try
14 it this way. Had you seen this truck on any
15 other occasion, other than what you testified
16 in connection with the drums?

17 A. I never saw it before.

18 Q. You never saw it again?

19 A. Never saw it.

20 Q. Okay.

21 Did you ever see it do any
22 other kind of work at the Grace plant, other
23 than what you testified to, the moving of the
24 drums?

1 A. No. I can't say that I have.

2 MR. SEGAL: Well, he didn't
3 even say he saw it move the drums.

4 BY MR. SCHLICTMANN:

5 Q. You assumed it?

6 MR. SEGAL: Yes, because he saw
7 some drums on the end, and he saw it over
8 there.

9 MR. SCHLICTMANN: A fair
10 assumption.

11 BY MR. SCHLICTMANN:

12 Q. Now, Mr. Barbas, I want you to examine Barbas
13 Exhibit 4, and that's an aerial photograph of
14 the plant as it existed before the
15 construction of the first addition.

16 MR. SEGAL: That's in '66, this
17 photo?

18 MR. SCHLICTMANN: That's
19 right.

20 BY MR. SCHLICTMANN:

21 Q. Do you see the Grace plant?

22 A. Right here?

23 Q. Yes.

24 Do you notice there's a trench

1 to the rear of the plant?

2 A. This one. Here.

3 Q. All right.

4 Now, Mr. Barbas, when you first
5 came to the Grace plant, the plant looked like
6 it did in that photograph, is that right,
7 there was one solitary building there, much as
8 it looked in that aerial photograph?

9 A. Yes.

10 Q. Now, you already testified when you went to
11 work you, from time to time, would pour
12 solvents, waste solvents into a trench to the
13 rear of the plant; is that right?

14 A. Yes.

15 Q. Would you be able to show us in that
16 photograph which trench you are referring to?

17 A. Right here. (Indicating.)

18 Q. Now, would you mark in red where, as best you
19 can, you had poured this material in the
20 trench?

21 Let me ask before you do that,
22 did you, in your diagram -- you put X's in
23 this what you referred to as a gully, toward
24 the end of the gully; is that right?

1 A. Yes.

2 Q. Is that what your best memory is, that you
3 would pour waste solvents into the end of the
4 gully?

5 A. Yeah. Along the edge.

6 Q. Along the edge, all right.

7 From that aerial photograph and
8 looking at it and based on your memory, can
9 you pick out the end of the trench there?

10 A. Can I see the end of the trench?

11 Q. Yes.

12 A. That I think is the end of the trench?

13 Q. Yes.

14 A. Yes.

15 Q. Would you be able to indicate, without making
16 a mark, just with your finger, where you think
17 the end of the trench is?

18 A. I would say this area here. (Indicating.)

19 This area here. (Indicating.)

20 Q. All right.

21 Well, I want you to examine the
22 photo --

23 Let me ask you this: Did the
24 trench, when it ended, during the time it was

1 appear to be on dirt.

2 BY MR. SCHLICTMANN:

3 Q. All right. Some on dirt and some on pavement?

4 A. This is dirt here. (Indicating.)

5 Q. Well, how would you describe the rear of the
6 plant during the time that you would pour
7 material into that trench; was it paved or was
8 it just dirt?

9 A. Dirt.

10 Q. All right.

11 And did you --

12 MR. CHEESEMAN: I think he's
13 answering as to the area where he poured stuff
14 into the trench.

15 MR. SCHLICTMANN: That's
16 right. Or what you called the gully.

17 BY MR. SCHLICTMANN:

18 Q. Did the gully come up to the place where there
19 was -- Well, let me put it this way. In that
20 dirt area to the rear of the plant, that's
21 where cars parked as indicated on that
22 photograph?

23 A. Yes.

24 Q. Did the trench come up to that area where the

1 cars parked?

2 A. No.

3 MR. CHEESEMAN: I don't know
4 what you mean by "that area where the cars
5 parked".

6 THE WITNESS: He's talking
7 about this area here, if I'm not mistaken.

8 BY MR. SCHLICHTMANN:

9 Q. All right.

10 On this photograph it shows
11 some cars; is that right?

12 A. Yes.

13 Q. It shows a paved area or not? Did you ever
14 remember seeing a paved area to the rear of
15 the plant?

16 A. No. I think this is dirt. This area here is
17 a dirt road. (Indicating.)

18 Q. I'm asking you to look at the area between
19 where the trench is and the main building.

20 A. All right.

21 Q. Do you see the area where the cars are parked
22 there?

23 A. Right here? (Indicating.)

24 Q. No. No. Right here. (indicating.)

1 A. Those are like cartons and crates.

2 Q. Do you remember there being cartons and crates
3 out to that area as depicted in the
4 photograph?

5 A. No, I don't remember that.

6 Q. You don't remember anything being stored to
7 the rear of the plant?

8 MR. CHEESEMAN: At the period
9 of time, before the first addition?

10 MR. SCHLICTMANN: Yes, before
11 the first addition.

12 A. I don't remember.

13 Q. How many feet away from the building was the
14 area where you poured the stuff into the
15 gully?

16 MR. SEGAL: Is the gully the
17 same as the trench?

18 THE WITNESS: No. This is what
19 he's talking about. Drainage.

20 MR. CHEESEMAN: It's a drainage
21 trench or gully.

22 MR. SCHLICTMANN: You call it
23 drainage trench or gully.

24 MR. CHEESEMAN: That's what was

1 written on Exhibit 1.

2 THE WITNESS: That's this area
3 here. (Indicating.)

4 BY MR. SCHLICTMANN:

5 Q. Let me just ask you this, Mr. Barbas: I'm
6 showing you a diagram that you previously
7 made, Barbas Exhibit No. 1. On that you
8 showed a gully and you put some X's on there;
9 is that right? Is that right?

10 A. Yeah.

11 Q. Okay.

12 Now, is that gully the same
13 thing as the trench shown in this aerial
14 photograph?

15 MR. CHEESEMAN: Which trench
16 are you referring to, Jan?

17 MR. SCHLICTMANN: The one right
18 behind the building, here. (Indicating.)

19 MR. CHEESEMAN: Since there are
20 at least two trenches in the back, I think you
21 got to have it marked rather than asking him
22 to use words

23 BY MR. SCHLICTMANN:

24 Q. Well, can you see from this aerial photograph

1 as you depicted as a gully on the aerial
2 photograph?

3 A. Yes, this is it right here. (Indicating.)

4 Q. Will you draw a red line through the trench
5 area that you call the gully in Barbas Exhibit
6 1?

7 MR. CHEESEMAN: Do you want him
8 to --?

9 BY MR. SCHLICTMANN:

10 Q. The entire trench that you remember.

11 MR. SEGAL: Trench/gully.

12 MR. SCHLICTMANN: Exactly.

13 BY MR. SCHLICTMANN:

14 Q. Doesn't the aerial photograph show that it
15 continues on, or you don't recognize it as
16 that?

17 A. I don't recognize it as that. I see
18 vegetation.

19 MR. CHEESEMAN: I think Mr.
20 Schlichtmann: Is interpreting less the
21 photograph which you're not qualified to do as
22 he is asking you to remember back to the
23 period in 1961 when you were pouring material
24 in that gully, and he's asking you to tell you

1 how far up towards the building that gully
2 extended as you remember it.

3 MR. SEGAL: Forgetting the
4 photograph, can you recall this trench/gully
5 going any closer to the building as you've
6 drawn it on this exhibit, which is No. 4? Do
7 you understand my question?

8 THE WITNESS: Yeah. I only
9 remember it as going up this far.
10 (Indicating.)

11 MR. SEGAL: Okay.

12 BY MR. SCHLICTMANN:

13 Q. Indicate where you remember the gully going?

14 A. Right here. (Indicating.)

15 Q. All right. Put in a red mark nice and sharp.

16 A. Like this?

17 Q. Yeah.

18 [Whereupon, the witness so
19 complied.]

20 BY MR. SCHLICTMANN:

21 Q. Now, how many feet from the building was it
22 that you had to travel to go to the part of
23 the gully where you poured the material?

24 A. It was quite a walk.

1 Q. All right.

2 How long a walk.

3 MR. SEGAL: Let me ask this:
4 How long did it take you to get there? Then
5 we can figure it out.

6 MR. CHEESEMAN: Are you going
7 to ask him how fast he walks?

8 A. A hundred feet.

9 Q. A hundred feet?

10 A. Maybe a hundred feet.

11 Q. A hundred feet.

12 Now, Mr. Barbas, you poured
13 material at the end of the ditch; isn't that
14 right?

15 A. Along the sides.

16 Q. But at the end of it?

17 A. Yes.

18 Q. So, wherever that trench came to an end near
19 the main building, that's the spot that you
20 poured material into it; isn't that right?

21 MR. SEGAL: You understand, as
22 opposed to walking halfway down the trench or
23 gully? You understand what he said.

24 THE WITNESS: Yeah.

1 BY MR. SCHLICTMANN:

2 Q. So, wherever the trench ended, in other words,
3 the closest point of the trench to the main
4 building, all right; do you understand what
5 I'm saying?

6 A. Yeah.

7 Q. The closest point of the trench to the main
8 building, that's the spot where you had poured
9 solvents, waste solvents into; is that right?

10 A. Yes.

11 Q. Is that right?

12 A. Yes.

13 Q. Now, I want you to assume -- and I'm just
14 asking you to assume this -- that this mark
15 where you have put a trench continued on into
16 this area right here. All right? I want you
17 to assume that.

18 MR. CHEESEMAN: Do you want to
19 mark that area, Mr. Schlichtmann?

20 [Whereupon, Mr. Schlichtmann
21 marked the area in question.]

22 BY MR. SCHLICTMANN:

23 Q. I'm writing in ink. I want you to assume that
24 that trench continued up until that area, all

1 right, and then terminated somewhere in this
2 area here. (Indicating.) All right?

3 MR. CHEESEMAN: Do you mean to
4 be drawing a jog now or just an end mark?

5 MR. SCHLICTMANN: Just an end
6 mark like he drew an end mark. All right.

7 BY MR. SCHLICTMANN:

8 Q. Now, I'm asking you to assume if, in fact,
9 that's true that's where the trench ended, is
10 it true, then, that that would have been the
11 area where you poured the waste solvents?

12 A. If that's where it ended?

13 Q. Yes.

14 A. I would say, yes, but it's not.

15 Q. All right.

16 A. Because it was much further of a walk away
17 from -- this is where people used to drive
18 around to get over here. (Indicating.)

19 Q. All right.

20 But I'm asking you, if the
21 trench did end at that point where I've
22 indicated with an ink mark, that would have
23 been the area where you poured waste solvents;
24 is that correct?

1 MR. CHEESEMAN: Object to the
2 question. It's lacking foundation, but by all
3 means, go ahead.

4 BY MR. SCHLICHTMANN:

5 Q. I'm asking a very simple question. If, in
6 fact, the trench ended where I indicated, that
7 would have been where you poured the waste
8 solvents; is that right?

9 A. Yes, but it's not.

10 Q. I understand that.

11 Now, Mr. Barbas, you poured
12 waste solvents into that trench throughout the
13 1960's, didn't you?

14 A. 1960's?

15 Q. Yes.

16 A. I think I stated that I only did it during
17 1961.

18 Q. I know what you stated, but I'm asking you --
19 you also made changes to your deposition, so
20 I'm now asking you, I want you to think about
21 the question very carefully.

22 A. Okay.

23 Q. You understand that you're under oath?

24 A. Yes.

1 Q. You understand that the statements you're
2 giving is under the pains and penalties of
3 perjury? You also understand that a copy of
4 your deposition as well as the previous ones
5 as well as to today's is going to be given to
6 the U.S. Attorney's Office for his review, as
7 well as other depositions that other people
8 testified in this case?

9 Now, with those considerations
10 in mind, I want to ask you if it's your memory
11 that you poured waste solvents into the trench
12 that you've indicated on that aerial
13 photograph throughout the 1960's?

14 MR. CHEESEMAN: I object to the
15 form of the question.

16 MR. SEGAL: You mean from '61
17 through '70?

18 MR. SCHLICTMANN: Through
19 1970.

20 MR. SEGAL: All right. Do you
21 understand the question? The question is,
22 simply: Did you pour -- Do you have a
23 recollection of pouring waste solvents into
24 the trench during that nine-year period?

1 THE WITNESS: No.

2 BY MR. SCHLICTMANN:

3 Q. All right.

4 Now, Mr. Barbas, if witnesses
5 saw you pour waste material into the trench
6 after 1961, throughout the 1960's, it is your
7 testimony that those witnesses will not be
8 telling the truth?

9 MR. SEGAL: Now, wait a
10 minute. Wait a minute. That's not a fair
11 question. Don't answer that one.

12 MR. CHEESEMAN: I object to the
13 question, and in part as to its form, because
14 I think you meant to say if someone said he
15 saw Mr. Barbas do it, would that be true or
16 not. But the witness has already answered the
17 question and said he didn't do it.

18 MR. SEGAL: He said he has no
19 memory of doing it. Because some witness
20 might say he did, it doesn't mean that that
21 witness is lying, and that's why I object to
22 that question.

23 MR. SCHLICTMANN: The witness
24 may not be lying.

1 MR. SEGAL: That's right.

2 MR. SCHLICTMANN: I simply want
3 to find out. So, Mr. Barbas might be
4 mistaken, then.

5 BY MR. SCHLICTMANN:

6 Q. So, I want you to think very carefully about
7 this, Mr. Barbas. I want you to think very
8 carefully. Now, I want you to remember back
9 over that period.

10 MR. SEGAL: To '70?

11 MR. SCHLICTMANN: From 1961 --

12 MR. SEGAL: Till when, the end
13 of it?

14 MR. SCHLICTMANN: Until 1970.

15 BY MR. SCHLICTMANN:

16 Q. At any time during that period did you pour
17 waste solvents into the trench to the rear of
18 the plant?

19 A. Any time from 1961 and 1970?

20 Q. Yes.

21 A. Yes.

22 Q. And for how long a period did you pour waste
23 material into that trench?

24 A. To the best of my memory, only a short period

1 of time. A couple of months.

2 Q. A couple of months in 1961?

3 A. Yes.

4 Q. After a couple of months you never did it
5 again at any time; is that right?

6 A. To the best of my memory.

7 Q. At any time?

8 A. I don't remember ever doing that again.

9 Q. At no other time after 1961 did you pour waste
10 solvents into the trench to the rear of the
11 plant?

12 MR. SEGAL: He already
13 testified that he has no recollection of doing
14 it after the couple of months in '61.

15 BY MR. SCHLICTMANN:

16 Q. And now, Mr. Barbas, you have no recollection
17 of pouring any waste material into the trench
18 to the rear of the plant at any time in the
19 1970's; is that right?

20 A. You said waste material?

21 Q. Yes.

22 A. I have no recollection. I don't remember if I
23 ever did. I don't think I did.

24 Q. All right.

1 So, now, I want you to think
2 very carefully now. At any time after 1961
3 did you at any time pour waste material or
4 waste liquid into the trench to the rear of
5 the plant at any time?

6 MR. CHEESEMAN: After 1961?

7 MR. SCHLICTMANN: After 1961.

8 A. I don't remember ever doing that.

9 Q. You know Mr. Meola?

10 A. Yes.

11 Q. And you know that Mr. Meola, on occasion,
12 would pour waste material into the trench?

13 A. Yes, I do.

14 Q. You know that?

15 A. Yeah.

16 Q. You saw him do it?

17 A. Yes.

18 Q. And for what period of time did you see Mr.
19 Meola do it?

20 A. Up until 1979.

21 Q. How frequently would Mr. Meola, to your
22 knowledge, pour waste material, waste liquid
23 into the trench to the rear of the plant?

24 MR. SEGAL: The question is:

1 How often did you see him do it?

2 BY MR. SCHLICTMANN:

3 Q. To your knowledge.

4 MR. SEGAL: How often did
5 you see him do it?

6 MR. SCHLICTMANN: We'll start
7 off generally and then get into more
8 specifically.

9 MR. CHEESEMAN: You're asking
10 him for hearsay now.

11 BY MR. SCHLICTMANN:

12 Q. From whatever source, Mr. Barbas, what is your
13 understanding as to how frequently Mr. Meola
14 poured waste material or waste liquid into the
15 rear of the plant? You've indicated --

16 MR. CHEESEMAN: You understand
17 that you asked a question that you can't read
18 into court?

19 MR. SEGAL: During what years?

20 MR. SCHLICTMANN: For ever how
21 long he was at the Grace plant.

22 MR. SEGAL: Do you understand
23 the question?

24 A. Yeah. Didn't I say 1979?

1 Q. You said he did it until 1979. When did he
2 start doing it?

3 A. He was always doing it.

4 Q. All the time you were there?

5 A. Yes.

6 Q. And you started there in 1961?

7 A. Right.

8 Q. Now, throughout that period of time, you
9 understood and knew that Mr. Meola was pouring
10 waste liquid into the trench to the rear of
11 the plant?

12 MR. CHEESEMAN: I object to the
13 form of the question, because you have mixed
14 understanding and knowledge together.

15 BY MR. SCHLICTMANN:

16 Q. To your knowledge, Mr. Meola poured waste
17 liquid to the rear of the plant --

18 MR. CHEESEMAN: He's now asking
19 for your direct observation.

20 MR. SCHLICTMANN: I'm speaking
21 English, Bill. He's not Portuguese. He
22 doesn't need an interpreter. If you don't let
23 me know --

24 MR. SEGAL: He can understand

1 the language; you're mixing up things.

2 BY MR. SCHLICTMANN:

3 Q. To your knowledge, Mr. Meola poured waste
4 liquid into that trench from when you got
5 there in 1961 till 1979?

6 A. I don't know.

7 Q. From the time you got there -- and that's 1961
8 that you got there?

9 A. Yes.

10 Q. All right.

11 Now, how frequently did Mr.
12 Meola, to your knowledge, pour waste liquid to
13 the rear of the plant?

14 MR. SEGAL: What he's saying
15 is: How often did you see him pour the stuff
16 in?

17 MR. SCHLICTMANN: No, to your
18 knowledge.

19 MR. CHEESEMAN: Let's get it
20 explained, then.

21 MR. SCHLICTMANN: After he's
22 told me his knowledge, we'll find out. He
23 could have been blind and still been able to
24 feel him.

1 BY MR. SCHLICTMANN:

2 Q. Did you talk to Mr. Meola? Did you order him
3 to do it every day? We'll find all these
4 things out.

5 MR. SEGAL: Wait a minute. The
6 problem, somebody could have said to him --

7 MR. SCHLICTMANN: I know. All
8 sorts of things could have happened. He could
9 have gotten love letters from Mr. Meola. I
10 don't know.

11 MR. SEGAL: To his knowledge, I
12 don't think it is. Let's have the question
13 simply.

14 Did you see him do it during
15 that period, and then you can say did other
16 people tell you.

17 BY MR. SCHLICTMANN:

18 Q. Did you ever see Mr. Meola pour waste liquid
19 into the trench?

20 A. Yes.

21 Q. Did you ever hear that Mr. Meola poured waste
22 liquid into the trench?

23 A. Yes.

24 Q. Did you have ever talk to Mr. Meola about his

1 pouring liquid, waste liquid into the trench?

2 A. Yes.

3 Q. Now, how frequently, to your knowledge, did
4 Mr. Meola pour waste liquid into the trench to
5 the rear of the plant?

6 MR. SEGAL: That's based on
7 your personal observation.

8 A. At least once a week.

9 Q. Now, the area that Mr. Meola dumped, you know
10 what that area is; is that right?

11 A. Yes.

12 Q. Was it just one area?

13 A. He could have dumped them on the ground, too.
14 There was evidence of other spots other than
15 in the gully.

16 Q. All right.

17 Would you indicate on that
18 aerial photograph which is in front of you,
19 which is Barbas Exhibit --

20 MR. SEGAL: 4.

21 BY MR. SCHLICTMANN:

22 Q. -- 4, would you be able to indicate on that
23 photograph where, during the time that you
24 were working for the Grace plant and there was

1 only one building there, in other words, prior
2 to the additions, would you be able to
3 indicate on that photograph the different
4 areas that, to your knowledge, Mr. Meola would
5 dump waste liquid?

6 MR. CHEESEMAN: You're asking
7 for occasions that he observed Mr. Meola do
8 so?

9 MR. SCHLICTMANN: To his
10 knowledge. Whatever source.

11 MR. SEGAL: Oh, no. Oh, no.
12 We're not going to go that route.

13 MR. SCHLICTMANN: I know you
14 don't want to go that route, but I want to go
15 that route.

16 MR. SEGAL: We're going to
17 permit him to say -- knowledge to me means
18 what you saw him do.

19 BY MR. SCHLICTMANN:

20 Q. Did Mr. Meola ever tell you where he poured
21 stuff?

22 MR. SEGAL: But that's not
23 knowledge.

24 MR. SCHLICTMANN: I think it's

1 knowledge.

2 MR. SEGAL: No, it isn't.

3 MR. CHEESEMAN: We're not going
4 to have any more answers until I've stated my
5 objection.

6 MR. SCHLICTMANN: Please do.

7 MR. CHEESEMAN: You have stated
8 time and time again on the record throughout
9 all of these depositions that when you say "to
10 your knowledge" you mean direct observation.
11 Now you've asked him questions, using the word
12 "knowledge", and I've understood that your
13 explanation applies to that. Now you're
14 suddenly telling us that when you say "to your
15 knowledge", you mean hearsay as well as direct
16 observation. I'm not going to permit the
17 deposition to go forward with that kind of
18 switching back and forth between the meaning
19 of words. It confuses the record.

20 MR. SCHLICTMANN: I'm going to
21 defer, Mr. Cheeseman, and I'm going to say,
22 Bill, we're going to be very specific to what
23 he heard and however else he understood that
24 he was doing things, fine with me.

1 MR. CHEESEMAN: You're asking
2 as well as hearsay, as well as direct
3 observation. Note my objection.

4 BY MR. SCHLICTMANN:

5 Q. Right now I want you to tell me or would you
6 be able to indicate on that aerial photograph
7 those areas where you observed Mr. Meola
8 dumping waste liquid on the Grace property
9 during the time there was a building prior to
10 the additions?

11 MR. SEGAL: That's not what
12 we're talking about. We're talking about the
13 trench, I understand.

14 BY MR. SCHLICTMANN:

15 Q. I'm saying any area you observed Mr. Meola
16 dumping.

17 MR. SEGAL: You put an M where
18 you saw Mr. Meola dump waste material. Okay?

19 BY MR. SCHLICTMANN:

20 Q. That's a red M.

21 [Whereupon, the witness so
22 complied.]

23 BY MR. SCHLICTMANN:

24 Q. Now, you indicate the red M where Mr. Meola

1 dumped waste liquid?

2 A. Right.

3 Q. Now, the material that Mr. Meola dumped, you
4 knew what that was, right?

5 MR. SEGAL: Did you know what
6 it was?

7 A. Yes.

8 Q. You knew it was waste solvents?

9 A. Yes.

10 Q. And you knew it was paint sludge?

11 A. Yes.

12 Q. And was it waste coolant liquid?

13 A. I believe that it was a waste coolant liquid,
14 yep.

15 Q. And it was also liquid which was used to
16 degrease parts, waste liquid?

17 A. Yes.

18 Q. And that was what went into the trench in the
19 area where you drew a red M?

20 A. Yeah.

21 One thing I want to get clear.

22 Q. Um-hmm.

23 A. This M is not the trench. It's the ground, so
24 there's no misunderstanding.

1 MR. SEGAL: I guess his
2 question, though, is there any spot in the
3 trench that you can recall Mr. Meola dumping
4 into?

5 MR. SCHLICTMANN: I'm not
6 asking him that.

7 MR. SEGAL: Yes, you are.

8 MR. SCHLICTMANN: Then I'm
9 taking it back, then.

10 BY MR. SCHLICTMANN:

11 Q. Right now, you put an red M on the photograph;
12 that's the area the ground where you saw him
13 dump on the ground?

14 A. Right.

15 Q. How often did you see Mr. Meola dump material
16 on the place where you put a red M?

17 A. It's hard to say how often. I had seen him on
18 occasion, a couple of times dumping things on
19 the ground.

20 Q. Would you say that's the area generally where
21 he dumped waste solvents on a weekly basis?

22 MR. CHEESEMAN: You're asking
23 now not only as to personal observation but
24 also from what he's heard or understood?

1 MR. SCHLICTMANN: Yes.

2 A. Yes, that's about the area.

3 Q. Mr. Meola, on a weekly basis, would dump waste
4 solvents and waste liquid?

5 A. Wastes.

6 Q. Waste liquid?

7 A. Waste liquid.

8 Q. Which you understood to also be waste
9 solvents?

10 A. Solvents.

11 Q. Now, other than the -- and I want you to put a
12 1 next to that, Meola 1.

13 MR. SEGAL: M-1.

14 MR. SCHLICTMANN: M-1.

15 MR. SEGAL: We'll make it to
16 M-16 before this case is over.

17 MR. SCHLICTMANN: Let's hope
18 so.

19 BY MR. SCHLICTMANN:

20 Q. Now, other than the area that you've indicated
21 as M-1, is there any other area, to your
22 knowledge, that Mr. Meola would dump waste
23 solvents and waste liquid?

24 A. No.

1 Q. No; is that what you said?

2 A. I said no.

3 Q. All right.

4 Did you ever see Mr. Meola pour
5 waste liquid or waste solvents into the
6 trench?

7 A. Yes.

8 Q. You did?

9 A. Yes.

10 Q. So, there's another area where Mr. Meola
11 dumped waste liquid and solvents?

12 MR. SEGAL: But he's talking
13 dumping on the ground.

14 BY MR. SCHLICTMANN:

15 Q. All right.

16 There's no other area that Mr.
17 Meola -- during the time before the additions,
18 now, to the main building -- during the time
19 it was just the main building there, there's
20 no other area on the ground that you remember
21 seeing Mr. Meola dump waste solvents and waste
22 liquid, is that right, other than the area
23 you've marked as M-1?

24 A. Right.

1 Q. Now, you have also, during the time that there
2 was a single building there before the
3 additions, you've also directly observed Mr.
4 Meola pouring waste solvents and waste liquid
5 into the trench to the rear of the plant where
6 you had on previous occasions or other
7 occasions dumped waste solvents and waste
8 liquid; is that right?

9 A. Yeah.

10 Q. Would you be able to indicate on this
11 photograph where you saw Mr. Meola dump waste
12 solvents and waste liquid into the trench?

13 A. I would say this area here. (Indicating.)

14 Q. Put an M-2 there, if you would.

15 [Whereupon, the witness so
16 complied.]

17 BY MR. SCHLICTMANN:

18 Q. Now, the times that Mr. Meola poured waste
19 solvents and waste liquids into the trench
20 were fewer times than he poured it onto the
21 ground where you've indicated N-1?

22 A. I'm not sure about that.

23 Q. Well, you directly observed him dumping in
24 both places; is that right?

- 1 A. Yes.
- 2 Q. Where did you see him dumping more, M-1 or
3 M-2?
- 4 A. M-1.
- 5 Q. M-1?
- 6 A. (Witness nodded affirmatively.)
- 7 Q. That was his regular spot for dumping
8 materials, as far as you observed?
- 9 A. Yes.
- 10 Q. Now, how would Mr. Meola -- during times that
11 you observed him -- how did Mr. Meola pour
12 this material onto the ground; what kind of
13 container did he use?
- 14 A. He had a vacuum cleaner with wheels with an
15 opening on the bottom for letting liquid out,
16 like an industrial vacuum cleaner that he
17 could wheel out. Also, would take waste,
18 metal chips with, I think, there was coolant
19 on them and dumped them on the ground.
20 Sometimes he'd just take buckets of waste and
21 throw it on the ground or in the trench.
- 22 Q. Did he ever use 55-gallon drums?
- 23 A. I don't know if he did.
- 24 Q. Do you have any reason to believe that he did?

1 A. No.

2 Q. All right.

3 You have directly observed him
4 use a vacuum, an industrial vacuum cleaner, a
5 liquid vacuum cleaner?

6 A. (Witness nodded affirmatively.)

7 Q. A vacuum cleaner for the sucking up of liquid?

8 A. Yes.

9 Q. What would you see him do with it; he would
10 undo a --

11 A. Like a plug on the bottom.

12 Q. And pour it on the ground?

13 A. Yes.

14 Q. Approximately how much liquid would come out
15 of the machine at any one time?

16 A. Five gallons.

17 Q. All right.

18 On other occasions you saw him
19 use buckets?

20 A. Yes.

21 Q. What's the biggest bucket you saw him use?

22 A. Five-gallon bucket.

23 Q. How many five-gallon buckets?

24 A. One.

- 1 Q. One?
- 2 A. (Witness nodded affirmatively.)
- 3 Q. Would this be done on a regular basis?
- 4 MR. CHEESEMAN: Which? Any or
- 5 all of this?
- 6 MR. SCHLICHTMANN: Yes, any or
- 7 all of this.
- 8 A. It would be brought out whenever it needed to
- 9 be done. There was no set schedule.
- 10 Q. What areas of the plant did he suck up this
- 11 liquid in a vacuum cleaner?
- 12 A. In the machine shop.
- 13 Q. What was the liquid used for?
- 14 A. Cooling the machinery. I think they call it
- 15 coolant.
- 16 Q. Do you know that that coolant had solvents in
- 17 it?
- 18 A. No, I wasn't aware of that.
- 19 Q. Did you know if the shop had a degreasing
- 20 tank?
- 21 A. Yes.
- 22 Q. Did you know that they use solvents in the
- 23 degreasing tank?
- 24 A. Am I aware that there was a solvent in the

1 degreasing tank, no.

2 Q. Do you know what happened to the liquid in the
3 degreasing tank, how was that --

4 A. Yes. It was brought out and emptied on the
5 ground.

6 Q. You say the degreasing tank was brought out?

7 A. Yes, sir.

8 MR. CHEESEMAN: Wait a minute.
9 He's asking if it was just the contents of the
10 degreasing tank or the actual piece of
11 equipment.

12 A. The actual piece of equipment.

13 Q. So, the actual tank was brought out?

14 A. Yes.

15 Q. And would you be able to indicate on that
16 aerial photograph where the degreasing tank
17 was brought out, where it would be turned over
18 and poured onto the ground?

19 A. It wasn't turned over, it had, like, a plug on
20 the bottom there.

21 Q. Plug?

22 A. Yeah.

23 Q. Would you be able to indicate on that
24 photograph?

1 A. M-1, in that area.

2 Q. Use blue here. Would you put a mark, an X and
3 mark it DT, the area where the degreasing tank
4 was brought out and the liquid was allowed to
5 be poured on the ground?

6 [Whereupon, the witness so
7 complied.]

8 BY MR. SCHLICTMANN:

9 Q. Is it right where the letters are?

10 A. Yes.

11 MR. CHEESEMAN: Said it's the
12 same as M-1. So, by writing DT on it, it
13 shouldn't be taken as some different meaning
14 there.

15 BY MR. SCHLICTMANN:

16 Q. Why don't you put an arrow pointing to both.

17 A. Right here?

18 Q. Yes. Exactly.

19 [Whereupon, the witness so
20 complied.]

21 BY MR. SCHLICTMANN:

22 Q. All right. Fine.

23 That degreasing tank you would
24 observe being brought out of the plant and

1 brought to that area and the liquid allowed to
2 pour out onto the ground?

3 A. Yes.

4 Q. And how often would that be done, to your
5 knowledge?

6 A. I don't know how often. I saw it done once.

7 Q. When did you see it done?

8 A. I forget the time, but I saw it happen.

9 Q. Was it in the 1960's or the 1970's?

10 A. I don't remember the time.

11 Q. Was that done on a regular basis, to your
12 knowledge?

13 A. I don't know.

14 Q. All right.

15 Who did you see do that?

16 A. Joe Meola.

17 Q. Joe Meola?

18 A. (Witness nodded affirmatively.)

19 Q. Did anybody assist him do it?

20 A. I don't know if anybody assisted him. I just
21 saw Joe Meola bring it out.

22 Q. Did you ever assist Joe Meola?

23 A. No.

24 Q. Did you ever assist Joe Meola in the pouring

1 of waste solvent and the liquid onto the
2 ground or into trenches?

3 A. Yes.

4 Q. You did?

5 A. (Witness nodded affirmatively.)

6 Q. Approximately how many occasions?

7 A. Used to bring out -- waste used to be called
8 paint sludge overspray.

9 Q. Yes. All right and...?

10 A. I used to bring it out on some occasions, if
11 it was wet, and pour it on the ground in this
12 area here. (Indicating.)

13 Q. All right.

14 When you say "this area here",
15 would you mark with a red circle the area that
16 you would pour paint sludge?

17 A. This area here.

18 [Whereupon, the witness so
19 complied.]

20 Q. All right.

21 Now, that's an area -- you're
22 looking at an aerial photograph which just
23 shows the first building; right?

24 A. Yes.

1 Q. With no additions?

2 A. (Witness nodded affirmatively.)

3 Q. And would you put an S or arrow?

4 [Whereupon, the witness so
5 complied.]

6 MR. CHEESEMAN: Is that
7 standing for paint sludge?

8 MR. SCHLICTMANN: Paint
9 sludge.

10 BY MR. SCHLICTMANN:

11 Q. And that would go on the ground?

12 A. Yes.

13 Q. What is paint sludge?

14 A. Overpaint that didn't collect on the thing
15 that was getting painted. It would collect in
16 a spray booth that had a -- like, I had in it
17 that made the paint float and then at the end
18 of the night you could scoop it up. I think
19 we discussed that before.

20 Q. Yes.

21 Now, that paint sludge had
22 waste solvent in it as well, is that right?

23 A. It had waste --

24 Q. Well, solvents were used in the painting

1 process; isn't that right?

2 A. Yes.

3 Q. Solvents were used to thin the paint?

4 A. Yes.

5 Q. And the waste solvent would collect in the
6 same areas as the paint sludge; isn't that
7 correct?

8 A. The waste solvent would usually evaporate.

9 Q. I understand. The liquid was used with the
10 paint?

11 A. Yes.

12 Q. The solvent was used with the paint?

13 A. Yes.

14 Q. All right.

15 And so that that paint and the
16 liquid which contained the solvent would all
17 collect into a tray and you would then empty
18 that into 55-gallon drums; is that right?

19 MR. CHEESEMAN: Well, he
20 already said that some of the solvent would
21 evaporate.

22 BY MR. SCHLICTMANN:

23 Q. All right.

24 Whatever didn't evaporate would

1 be part of the paint sludge?

2 A. Yes.

3 Q. And then that tray was then emptied into a
4 55-gallon drum; is that right?

5 A. On occasion.

6 Q. And you would allow the paint sludge to
7 accumulate in the 55-gallon drum?

8 A. No. No. I think you're getting off track.

9 Q. All right.

10 Didn't you take the paint
11 sludge and put it into 55-gallon drums?

12 A. On occasion.

13 Q. On occasion. All right.

14 And then, did you take the
15 paint sludge out from the 55-gallon drum, or
16 did you take the 55-gallon drum containing
17 paint sludge and pour it onto the ground?

18 A. No.

19 Q. How would you carry the paint sludge that you
20 poured on the ground which you indicated with
21 a circle?

22 A. In either a five-gallon bucket or a plastic
23 tote tray.

24 Q. How much liquid would the tote tray hold, to

1 your knowledge?

2 A. I would say about five gallons.

3 Q. Were you able to carry it manually?

4 A. No, with a dolly.

5 Q. It was too heavy to carry manually?

6 A. (Witness nodded affirmatively.)

7 MR. CHESEMAN: You can't just
8 nod your head.

9 MR. SCHLICTMANN: Yes, you have
10 to answer yes or no.

11 MR. SEGAL: Or I don't know or
12 I don't understand the question.

13 BY MR. SCHLICTMANN:

14 Q. How often was this done on a regular basis,
15 the emptying of paint sludge onto the ground
16 where you've circled?

17 MR. SEGAL: We're talking about
18 by you now.

19 BY MR. SCHLICTMANN:

20 Q. By you?

21 A. Yes.

22 Q. How often would it be done?

23 A. As often as it needed to be.

24 Q. Mr. Barbas, was it your understanding --

1 You said you saw the degreasing
2 tank being brought out and emptied; you saw
3 it? At least on one occasion, you saw it?

4 A. One occasion I saw it.

5 Q. Was it your understanding that it was done on
6 a regular basis?

7 A. I can't say that. I can't say that it was my
8 understanding.

9 Q. Do you have any reason to believe that it was
10 done on a regular basis?

11 A. I'd say it was done whenever it had to be
12 done.

13 Q. All right.

14 Approximately what was your --

15 A. I have no idea. I only saw it go out once.

16 Q. But your understanding was whenever it needed
17 to be done it would be done that way?

18 A. Yes.

19 Q. All right.

20 And Joe Meola would be the one
21 to do it?

22 A. Yes.

23 Q. And you don't know if he was assisted or not?

24 A. (Witness nodded negatively.)

- 1 Q. It's a pretty big tank?
- 2 A. It has wheels.
- 3 Q. Was there only one degreasing tank in the
4 plant?
- 5 A. At what time?
- 6 Q. Prior to the additions.
- 7 A. I think there was just one.
- 8 Q. Later there was more than one?
- 9 A. There was, like, a replacement for the
10 original one.
- 11 Q. Oh, all right.
12 Did that replacement also have
13 wheels?
- 14 A. I don't know about that.
- 15 Q. Okay.
16 When was it replaced, do you
17 know, after the additions or before?
- 18 A. I believe in the late '70's.
- 19 Q. They replaced the ones with the wheels with
20 this new machine?
- 21 A. With the new machine.
- 22 Q. Does this one have wheels now, do you know?
- 23 A. I don't know if it has wheels.
- 24 Q. But the machine, the degreasing tank, you're

1 familiar with the one that Joe Meola would
2 take out on occasions and dump the liquid on
3 the ground? You've indicated that was in use
4 up until the late 1970's?

5 A. I'd say so.

6 Q. Now, you, from time to time, would put
7 55-gallon drums in the rear of the plant?

8 A. Yes.

9 Q. These were drums that you filled up with waste
10 solvent?

11 A. Myself and other people that were using
12 solvent that had to dispose of it.

13 Q. All right.

14 It would collect in 55-gallon
15 drums?

16 A. Yes.

17 Q. And you would be the one who would be
18 responsible for putting them out in the back?

19 MR. CHEESEMAN: By "putting
20 them out in the back", you mean storing them?

21 MR. SCHLICHTMANN: I mean
22 storing them out in the rear.

23 A. Yes.

24 Q. Now, on any occasions prior to building the

1 additions did you ever dump any 55-gallon
2 drums on the ground anywhere to the rear of
3 the plant?

4 A. To the best of my knowledge, no.

5 Q. At any time, other than the time that you've
6 talked about now, did you at any time pour
7 55-gallon drums containing waste liquid at any
8 time to the rear of the plant?

9 MR. CHEESEMAN: Other than
10 the --

11 BY MR. SCHLICHTMANN:

12 Q. Other than the one you've testified to.

13 A. To the best of my knowledge, no.

14 Q. You used to pour waste on the ground, but that
15 would be in five gallon buckets or tote trays?

16 A. Yes. Whenever it needed to be done, and it
17 was also usually cleaned up, dried, and put in
18 for the trashman to take.

19 Q. All right.

20 So, when the paint sludge was
21 poured on the ground, it would stay there for
22 awhile?

23 A. Yeah, until it dried.

24 Q. How long would it take to dry?

- 1 A. Probably a week, depending on the weather. If
2 it was wet, we couldn't put it in for the
3 trashman to take because it leaked through the
4 canvas bags.
- 5 Q. The liquid in the paint sludge would go into
6 the ground?
- 7 A. No, to dry.
- 8 Q. Or to dry, so that the liquid would go away
9 and then you'd have just dried sludge and then
10 you would collect the dried sludge and you put
11 that in the trash?
- 12 A. (Witness nodded affirmatively.)
- 13 Q. And sometimes that would be a week, you'd wait
14 as much as a week for the stuff to dry on the
15 ground?
- 16 A. About.
- 17 Q. What was considered to be a lot; in other
18 words, what amount would dictate to your
19 taking it out on the ground and letting it
20 dry?
- 21 A. A couple of gallons, two gallons.
- 22 Q. Anything more than a couple of gallons?
- 23 A. Yes.
- 24 Q. How often would you do that?

1 A. Whenever it needed to be done.

2 Q. Which is, approximately, a weekly basis?

3 A. Yeah, weekly. I'd say weekly.

4 Q. All right.

5 A. Just whenever it needed to be done.

6 Q. Now, that was done, and done in the area which
7 you've indicated, done throughout the time
8 prior to the first addition being built?

9 A. Say that again?

10 Q. All right.

11 Putting the paint sludge on the
12 ground to dry, that was done throughout the
13 time that the plant, the single plant, existed
14 up until the first addition was built?

15 A. Yes.

16 Q. And then continued after the first addition
17 was built?

18 A. Yes.

19 Q. The area that you used to dump moved after the
20 first addition was built?

21 A. Yes.

22 Q. Now, I show you Barbas Exhibit No. 2 and ask
23 that you examine that. You recognize that as
24 a picture of the building with the first

1 addition on it; is that right?

2 A. Yes.

3 Q. All right.

4 Would you be able to indicate
5 on that photograph the areas on the ground
6 where you would dump paint sludge to allow it
7 to dry?

8 A. This is just an approximation.

9 Q. Yes, an approximation.

10 A. It's even hard to see where the driveway is.

11 MR. CHEESEMAN: The witness is
12 having difficulty interpreting this area. So,
13 you know, I'm going to object to use of any of
14 these photographic exhibits because the
15 witness isn't qualified to interpret. And for
16 purposes of the deposition testimony, are you
17 asking the witness to assume that the straight
18 line running behind the plant that is a
19 demarcation between a relatively dark gray
20 area close to the building and the lighter
21 area of apparent underbrush is the edge of the
22 pavement?

23 MR. SCHLICTMANN: Yes.

24 MR. CHEESEMAN: Do you

1 understand that, Mr. Barbas?

2 THE WITNESS: Yes.

3 MR. SCHLICTMANN: I'll mark
4 with an ink line the area where -- at the edge
5 of the pavement.

6 MR. CHEESEMAN: With that
7 understanding, can you respond to his
8 question?

9 THE WITNESS: Yeah.

10 BY MR. SCHLICTMANN:

11 Q. All right. Would you please indicate the area
12 on the ground to the rear of the plant where
13 you would dump paint sludge to allow it to dry
14 after the first addition was built?

15 [Whereupon, the witness so
16 complied.]

17 BY MR. SCHLICTMANN:

18 Q. All right.

19 And would you put PS there.

20 [Whereupon, the witness so
21 complied.]

22 MR. CHEESEMAN: PS for paint
23 sludge?

24 MR. SCHLICTMANN: Paint sludge,

1 right.

2 BY MR. SCHLICTMANN:

3 Q. Now, after the first addition was built, did
4 you observe from time to time Joe Meola
5 pouring waste solvent and waste liquid to the
6 rear of the plant?

7 A. Yes.

8 Q. Would you be able to indicate where you saw
9 Mr. Meola dump waste solvent and waste liquid
10 on the ground, and put M-1?

11 A. In the same general area.

12 Q. Why don't you put an M-1 there,.

13 [Whereupon, the witness so
14 complied.]

15 MR. SEGAL: This is all on
16 Exhibit 2?

17 MR. SCHLICTMANN: Yes.

18 BY MR. SCHLICTMANN:

19 Q. Now, did you ever see Mr. Meola take any waste
20 liquid from the degreasing tank on any
21 occasion after the first addition was built
22 and pouring on the area which you've indicated
23 as M-1?

24 A. You said from the degreasing area?

1 Q. The degreasing tank.

2 A. I'm not sure about the time.

3 Q. What liquid was Mr. Meola dumping, to your
4 knowledge, at the area you've indicated as
5 M-1?

6 A. I believe it's coolant. Waste coolant.

7 Q. And was there anything else, other than waste
8 coolant? Did he also participate in dumping
9 the paint sludge?

10 MR. CHEESEMAN: The
11 Stenographer is going to get his answers
12 better if you go back there.

13 BY MR. SCHLICTMANN:

14 Q. Did Mr. Meola ever dump paint sludge in that
15 area as well; did you observe him do that?

16 A. Yes.

17 Q. He would help you do that?

18 A. Yes.

19 Q. Did you ever observe Mr. Meola dumping waste
20 liquid or waste solvent in the trench area
21 running along the warehouse?

22 A. You said during the first addition?

23 Q. Yeah. After the first addition was built.

24 A. I can't say.

1 Q. Do you see on that aerial photograph, see a
2 feature running along the building?

3 A. Feature?

4 Q. Yes, this area here (indicating), do you see
5 that?

6 A. Yeah.

7 Q. Do you recognize that as the trench that ran
8 along the warehouse to the rear of the plant
9 after the first addition was built?

10 A. Um.

11 MR. SEGAL: What is the answer,
12 Tom?

13 A. Yes.

14 Q. You do. All right.

15 Would you run a red line along
16 the trench as you remember it to have been as
17 indicated on that aerial photograph, to the
18 best of your memory?

19 A. Based on my memory? I interpret --

20 Q. In other words, I'm asking, does looking at
21 the aerial photograph help you in determining
22 where that trench was, based on your memory?

23 A. Started here and ended here. (Indicating.)

24 Q. Do you remember it running along the

1 warehouse? After the first addition was
2 built, there was an area of the trench that
3 ran along the warehouse?

4 A. I think on one of the earlier photographs it
5 doesn't seem to have gone up as far as that.

6 Q. What I'm asking now is your memory. That's
7 this one here?

8 A. The last one.

9 Q. What I'm asking you is, do you remember that
10 the trench, after the first addition was
11 built, that part of the trench to the rear of
12 the plant ran along the warehouse; do you
13 remember that?

14 A. No.

15 Q. You don't remember that?

16 A. I think it ran, like, to the back of the
17 warehouse. Like you said, alongside.

18 Q. Yeah, alongside. I'm asking you in this
19 aerial photograph, to examine this aerial
20 photograph, and do you agree that in looking
21 at this aerial photograph -- maybe you don't
22 agree -- it seems to indicate that the trench
23 is going along the warehouse to a certain
24 point?

1 A. Not to me.

2 Q. It doesn't indicate what to you?

3 A. No. It indicates that it ends here.

4 (Indicating.)

5 Q. Right at the warehouse?

6 A. Yeah.

7 Q. You don't remember the trench going along the
8 warehouse at all?

9 A. No.

10 Q. Just to the rear of the warehouse?

11 A. Yeah.

12 Q. Would you indicate on that photograph where
13 you remember the trench going to; in other
14 words, the area that it covered, and draw a
15 line between the two marks?

16 [Whereupon, the witness so
17 complied.]

18 BY MR. SCHLICTMANN:

19 Q. Now, at any time did you ever observe or did
20 you, yourself, participate in the dumping of
21 waste material into that trench after the
22 first addition was built?

23 MR. SEGAL: Wait a minute. For
24 the record, when was the first addition

1 built?

2 MR. SCHLICHTMANN: 1966.

3 MR. SEGAL: Okay.

4 A. To the best of my knowledge, no.

5 Q. Did you ever witness anybody or observe
6 anybody dumping waste material into that
7 trench which you've drawn on that aerial
8 photograph after the first addition was built?

9 A. To the best of my knowledge, no. I don't
10 remember anybody.

11 Q. So, to your knowledge, you did observe Mr.
12 Meola, though, dumping waste solvent to the
13 rear of the plant where you've indicated as
14 M-1; is that right?

15 A. (Witness nodded affirmatively.)

16 Q. You have to answer.

17 A. Yes.

18 Q. Now, is there any other area that you can
19 indicate on that aerial photograph where you
20 saw Mr. Meola dumping waste solvent and waste
21 liquid to the rear of the plant other than
22 M-1?

23 A. Just there.

24 Q. And that was done on a regular basis?

1 A. Whenever it needed to be done.

2 Q. Which would be, approximately, a weekly basis?

3 A. Could be.

4 Q. Is that about right?

5 A. I can't be specific. I said whenever it
6 needed to be done.

7 Q. Would it be approximately a weekly basis?

8 A. I can't say for sure.

9 Q. Is that your best memory?

10 A. Yes.

11 Q. That's your best memory?

12 A. (Witness nodded affirmatively.)

13 MR. SEGAL: What period of time
14 are we talking about?

15 MR. SCHLICTMANN: After the
16 first addition was built.

17 MR. SEGAL: After '66, is it
18 your testimony that's where he dumped waste
19 material; is that your testimony?

20 THE WITNESS: Yeah.

21 BY MR. SCHLICTMANN:

22 Q. Yes?

23 A. Yes.

24 Q. Now, after the second addition was built, I

1 ask you to examine Barbas Exhibit No. 5. Did
2 you ever observe Mr. Meola dumping waste
3 solvent and waste liquid to the rear of the
4 plant?

5 A. Yes.

6 Q. Would you be able to indicate on that
7 photograph where Mr. Meola dumped waste
8 solvent and waste liquid and use M-1?

9 [Whereupon, the witness so
10 complied.]

11 BY MR. SCHLICTMANN:

12 Q. Would you describe the area as best you can,
13 as best you remembered it, how would you
14 describe the area that he dumped it on?

15 MR. CHEESEMAN: You mean its
16 location?

17 MR. SCHLICTMANN: Its location.

18 MR. CHEESEMAN: You want him to
19 describe it as well as having marked it on the
20 photograph?

21 MR. SCHLICTMANN: Exactly.

22 Describe it, based on your memory, and if the
23 aerial photograph helps you, if it helps you
24 at all...

1 A. Straight back from the doorway leading into
2 the plant from the rear, and looking at the
3 photograph, to the right-hand side of the
4 drainage trench.

5 Q. Um-hmm.

6 All right.

7 And between the pit that you
8 drew and the warehouse?

9 A. (Indicating.)

10 Q. Why don't you draw a circle around that area,
11 the area where he generally dumped waste solid
12 and waste liquid.

13 [Whereupon, the witness so
14 complied.]

15 MR. SEGAL: "He" is who, Joe?

16 MR. SCHLICTMANN: Mr. Meola.

17 BY MR. SCHLICTMANN:

18 Q. And your description of the area is that it
19 was -- I'm sorry?

20 A. Approximately straight back from the main
21 entrance into the rear of the plant.

22 Q. All right.

23 And --

24 A. To the right of the warehouse as you're

1 looking at it from this photograph.

2 Q. All right.

3 And approximately how many feet
4 from the main building?

5 A. Approximately a hundred feet.

6 Q. All right.

7 And you're familiar with the
8 area now of the building, building as it is
9 now?

10 A. Yes.

11 Q. You know there's asphalt, there's a pea stone
12 area?

13 A. Yes.

14 Q. Is that the area where he did this dumping
15 M-1, the pea stone area?

16 A. Yes.

17 Q. And that pea stone area is between the asphalt
18 and the warehouse and the field?

19 A. Approximately.

20 Q. All right.

21 And that's the area Mr. Meola
22 would, on a regular basis, dump waste solvent
23 and waste liquid --

24 A. Yes.

1 Q. -- after the second addition was built?

2 A. Yes.

3 MR. CHEESEMAN: Why don't you
4 ask him if the pit was immediately adjacent to
5 that pea stone area.

6 BY MR. SCHLCITMANN:

7 Q. Was the pit immediately adjacent to that pea
8 stone area?

9 A. What do you mean by "adjacent"; nearby?

10 Q. Yeah.

11 A. It's closeby. I think it was closeby.

12 Q. All right.

13 As you've indicated in the
14 photograph?

15 A. Yeah. Pretty close. It's not approximate.
16 It's just an estimate.

17 Q. As best you can?

18 A. Yeah.

19 Q. All right.

20 So, that was at or near the pea
21 stone area?

22 A. Yes.

23 Q. The pit?

24 A. No.

1 Q. The dumping area that Mr. Meola did?

2 A. Yes. The area that's covered over with now by
3 pea stone.

4 Q. Okay.

5 And the pit was near that area?

6 A. The pit was a little ways off.

7 Q. A little ways off?

8 A. Where it's fenced in now.

9 Q. Yeah.

10 A. That's about the general area.

11 Q. Is that about the general area?

12 A. I think it is.

13 Q. All right.

14 That's not the way you've drawn
15 it on that photograph, is it?

16 A. It's approximate. Approximate.

17 MR. CHEESEMAN: This
18 illustrates why I'll be objecting to lay
19 witnesses interpreting aerial photographs.
20 It's clearly misleading to a layman.

21 BY MR. SCHLICTMANN:

22 Q. How many feet from where Mr. Meola dumped
23 waste solvent and waste liquid was the pit,
24 approximately?

1 A. 50 or 60 feet.

2 Q. Okay.

3 And was it further behind the
4 warehouse or alongside the warehouse, the pit,
5 than the area where Mr. Meola dumped waste
6 solvent and liquid?

7 A. The excavated area?

8 Q. The excavated area you poured drums.

9 A. Where was it located?

10 Q. Yes.

11 A. In accordance with the pea stone?

12 Q. Yes.

13 A. I'd say about 50 or 60 feet away.

14 Q. From the whole pea stone area?

15 A. Yes.

16 Q. All right.

17 Now, to your knowledge, was
18 liquid from the degreasing tank ever also
19 poured onto the pea stone area?

20 A. I don't know that for sure.

21 Q. What kind of containers would Mr. Meola use to
22 dump waste solvent and waste liquid on the pea
23 stone area which you've indicated as M-1?

24 MR. CHEESEMAN: We're referring

1 now to Exhibit 5?

2 MR. SCHLICTMANN: After the
3 building of the second addition as is
4 indicated on Exhibit 5.

5 MR. SEGAL: After '66?

6 MR. SCHLICTMANN: Right.

7 A. Five-gallon buckets.

8 MR. CHEESEMAN: That's after
9 1974?

10 MR. SEGAL: I'm sorry.

11 BY MR. SCHLICTMANN:

12 Q. After the building of the second addition, you
13 also would pour paint sludge on the ground?

14 A. Yes.

15 Q. Would you be able to indicate where you poured
16 paint sludge? Use PS.

17 [Whereupon, the witness so
18 complied.]

19 BY MR. SCHLICTMANN:

20 Q. All right.

21 Now, you've drawn a circle off
22 of the area where is darkened; is that right?

23 A. Yeah.

24 Q. All right.

1 Is that off of the asphalt
2 area?

3 A. One thing. This area that you made the blue
4 line, that's the fence --

5 Q. Yes.

6 A. -- if I'm not mistaken --

7 Q. Right.

8 A. -- and the roadway's next to it.

9 Q. Yes.

10 A. And the area which I have made the circle is
11 off the roadway.

12 Q. Off the roadway?

13 A. Yes.

14 Q. All right.

15 Was it right off the roadway or
16 a few feet from the roadway?

17 A. Right off the roadway.

18 Q. That's where you would pour the paint sludge?

19 A. Yes.

20 Q. Did you indicate with a circle there?

21 A. I made a line. I made this line here.

22 (Indicating.)

23 Q. That's where you would pour the paint sludge
24 for drying?

1 A. Yes.

2 Q. Now, on that photograph you got the paint
3 sludge area in one area and then you have the
4 pit, and then you have M-1, the area where Joe
5 Meola dumped waste solvent and waste liquid,
6 is that accurate, that those essentially
7 were --

8 A. Fairly accurate. They seem to be to me. You
9 know, like I say --

10 MR. CHEESEMAN: You answered
11 before he finished the question. I think he
12 was about to ask you if they were in a
13 straight line, the three of them.

14 BY MR. SCHLICTMANN:

15 Q. -- essentially as depicted on the aerial
16 photograph?

17 A. In the same general area.

18 Q. In other words, you had the paint sludge area,
19 you moved over, you'd find the pit --

20 A. It was way back.

21 Q. Back further?

22 A. Because I made that drawing, then we're adding
23 more things to it. It's hard to get
24 everything in it. It's the same general

1 area. The pit is further back.

2 Q. Okay.

3 Approximately how many feet
4 from the paint sludge area would the pit be?

5 A. 60 feet.

6 Q. Now, you drew the width and the length of that
7 pit; is that right?

8 A. Yes.

9 Q. All right.

10 How clear are you that the
11 width is where you've indicated it and the
12 length is where you've indicated it?

13 A. How clear am I?

14 Q. Yes.

15 A. I'm making an approximation.

16 Q. I understand, but you had a clear memory of
17 the pit being longer than it was wide?

18 A. Yes.

19 Q. All right.

20 How clear is your memory that
21 the length is as you've depicted it on that
22 aerial photograph as opposed to the width?

23 MR. CHEESEMAN: You've drawn it
24 as being in an east/west direction. Are you

1 sure it was that way rather than in a cross --

2 THE WITNESS: No, I'm positive
3 it was that way. I'm positive about that.
4 It's not the opposite way. Just the way I've
5 done it.

6 BY MR. SCHLICTMANN;

7 Q. Why are you so positive?

8 A. Because I remember you can see 93 from that
9 where we were standing to empty the drums.

10 Q. And that was the shorter length as opposed to
11 the longer?

12 A. That would be like this way in accordance to
13 the longer sides. (Indicating.)

14 Q. And that was a distinct memory that you had?

15 A. Yes.

16 Q. All right.

17 So, the excavated pit was not
18 running alongside the main building; it was
19 facing the main building?

20 A. Yes.

21 Q. So, its shortest end or -- shortest side,
22 smaller side, all right, smaller side was
23 facing the main building?

24 A. Yes.

1 Q. And its longer side was parallel to the
2 warehouse?

3 A. To the warehouse, yes.

4 Q. Yes?

5 A. Yes.

6 Q. All right.

7 Now, if you were at the
8 warehouse and you were at the end of the
9 warehouse, in other words, away from the main
10 building --

11 A. Right.

12 Q. -- you were standing at that end and you were
13 looking directly north --

14 A. Yes.

15 Q. You know which way due north is?

16 A. Yes.

17 Q. -- that's parallel to the main building, you
18 would see the pit?

19 A. Yes.

20 Q. That would be in your vision?

21 A. Yes.

22 Q. As opposed to turning and looking back to the
23 field?

24 A. Let me get this straight. If I was standing

1 at the -- you said the end of the warehouse?

2 Q. That's right.

3 A. -- and looking north? If I'm not mistaken --

4 Q. You're standing here at the warehouse.

5 MR. CHEESEMAN: Northeast
6 corner of the warehouse.

7 BY MR. SCHLICTMANN:

8 Q. And you were looking directly north this
9 way --

10 A. Yes.

11 Q. -- along the asphalt paved area and along the
12 pea stone area --

13 A. (Witness nodded affirmatively.)

14 Q. -- your vision -- you would directly intersect
15 the pit?

16 A. I'd see the area that it was at. Yes.

17 Q. All right.

18 It would be in your direct
19 field of vision?

20 A. Yes.

21 Q. All right.

22 In other words, it wouldn't be
23 off to the side of your vision; it would be
24 directly in your vision?

1 A. I could see it.

2 MR. SEGAL: It depends how
3 you're standing.

4 MR. CHEESEMAN: The question is
5 misleading, and I object to it because you've
6 a paved area. When you stand at the northeast
7 corner and look due north, you are looking at
8 the paved area, and that is not the case, you
9 are looking on a shrubbed and wooded area.

10 MR. SEGAL: Let's determine
11 where east is facing.

12 MR. CHEESEMAN: This is another
13 problem in determining the angles in an aerial
14 photograph. Perhaps you want to put the
15 photographs away and get us all back into a
16 frame of mind in remembering the thing.

17 MR. SCHLICTMANN: No, I think
18 the photographs are very helpful.

19 MR. CHEESEMAN: I think they
20 are very confusing myself.

21 MR. SCHLICTMANN: No, I think
22 they're very helpful.

23 MR. SEGAL: It's one to one. I
24 think they're sort of confusing.

1 BY MR. SCHLICTMANN:

2 Q. Was the pit that you poured the drums into,
3 was that excavated area where trees were on
4 the property?

5 A. I don't remember that.

6 Q. Do you remember that after the second addition
7 was built -- you believe this was before the
8 asphalt was put down to the rear of the second
9 addition; is that right?

10 A. Whoa.

11 MR. SEGAL: Hold the phone.

12 BY MR. SCHLICTMANN:

13 Q. You believe the pit was excavated before they
14 put the asphalt down to the rear of the second
15 addition; is that right?

16 A. That, I'm not sure about. I think I told you
17 that before.

18 Q. I know you're not sure. But you think that's
19 the case?

20 A. I'm not sure.

21 Q. You think so?

22 A. I said I'm not sure.

23 Q. I understand, but your best memory was that it
24 wasn't there at the time of the asphalt --

1 A. I'm not sure.

2 Q. Well, if you had to chose, which would you
3 chose, if the asphalt was there or it wasn't
4 there?

5 MR. CHEESEMAN: If you're not
6 sure, you can't chose. If you think you can
7 chose, please say so.

8 BY MR. SCHLICTMANN:

9 Q. How would you describe the area behind the
10 second addition where the -- on the day that
11 the pit was -- on the day that you poured the
12 drums into the pit, how would you describe
13 that area?

14 A. There was asphalt inside the fenced area, I
15 know that. But I'm not sure about the
16 outside.

17 Q. So, you're sure it was in the fenced-in area?

18 A. That was the storage area.

19 Q. But you don't remember having a memory of
20 asphalt being outside of the fence?

21 A. Right.

22 Q. The drums were being stored outside of the
23 fenced-in area?

24 A. Yes.

1 Q. Were they on asphalt, or were they on earth
2 the drums?

3 A. That, I'm not sure about.

4 Q. Why don't you think about it and tell me what
5 your best memory is.

6 MR. SEGAL: This is on the date
7 that the pouring took place?

8 MR. SCHLICTMANN: That's
9 right.

10 MR. SEGAL: Do you recall where
11 the drums were?

12 THE WITNESS: I'm not sure. I
13 don't want to give you the wrong answer. I
14 don't want to give the wrong answer. I'm just
15 not sure.

16 BY MR. SCHLICTMANN:

17 Q. You were sure that the asphalt was inside the
18 fenced-in area, not sure that it was outside
19 of the fenced-in area?

20 A. Yes.

21 Q. Now, you said that Mr. Meola continued to dump
22 waste solvent and waste liquid to the rear of
23 the plant up until what period?

24 A. 1979.

1 Q. What happened in 1979?

2 A. Joe Meola retired and, obviously, Ulf Nordin
3 was taking over, and I think they just said,
4 "No more dumping."

5 Q. Who is that?

6 A. I don't know who said it, but there just
7 seemed to be a consensus of no more dumping,
8 because there was a general cleanup of the
9 area, and we put the pea stone down.

10 Q. All right.

11 Did that general cleanup of the
12 area take place in 1979?

13 A. I think so.

14 Q. All right.

15 And what was cleaned up at that
16 general cleanup?

17 A. All the back area.

18 Q. All right.

19 And what exactly was cleaned
20 up?

21 A. Maintenance of the building, things of that --
22 things of that nature. A general cleanup of
23 the area.

24 Q. Had any cleanup taken place, to your

1 knowledge, prior to 1979?

2 A. Yeah, they always did.

3 Q. So, this is a regular cleanup?

4 A. (Witness nodded Head affirmatively.) There
5 might be have been the big shots coming up
6 from Duncan.

7 Q. But you remember a cleanup in 1979?

8 A. Of...?

9 MR. SEGAL: Of what?

10 BY MR. SCHLICHTMANN:

11 Q. Of a general yard cleanup; is that right?

12 A. Yes.

13 Q. And this happened just before they made the
14 decision not to dump anymore or --

15 A. I'd say it was around the same time, '79.

16 Q. You participated in the cleanup?

17 A. No.

18 Q. You were there when the cleanup was done?

19 A. Yes.

20 Q. It was done on a weekday?

21 A. During the week.

22 Q. And who participated in that cleanup, to your
23 knowledge?

24 A. Joe Meola. The reason for the cleanup, there

1 was a lot of wood there. They wanted to take
2 the wood out. Joe Meola and some -- somebody
3 driving a forklift. It could have been Frank
4 Kelley. And a truck came in and took all the
5 wood and anything that had to be cleaned up.

6 Q. Why was a forklift needed?

7 A. To lift the wood onto the truck.

8 Q. Were drums also moved during that cleanup?

9 A. I didn't see any drums.

10 Q. Were old empty drums moved?

11 A. Not to my knowledge.

12 Q. Were any drums taken from the rear of the
13 plant during that cleanup?

14 A. No.

15 Q. During that cleanup, were any pits dug?

16 A. To my knowledge, no.

17 Q. Do you have any reason to believe that some
18 pits were dug during that cleanup?

19 A. Do I have any reason to believe?

20 Q. Yes, from any source.

21 A. No. No.

22 Q. Do you have any reason to believe that a pit
23 was dug on the property for whatever reason,
24 other than the pit that you've testified to?

1 A. No. Wait a minute. You're asking the
2 question do I have --

3 Q. Are you aware, from whatever source, are you
4 aware that there were any other pits dug on
5 the property during the time that you worked
6 at the Grace plant, other than the pit that
7 you've testified to that you poured things
8 into?

9 A. I have to say no.

10 Q. You're aware of no other?

11 A. No. I would have to say no. I'd have to say
12 no.

13 Q. You know Mr. Kelley, Paul Kelley?

14 A. Yes.

15 Q. Are you aware that Paul Kelley has testified
16 that during a cleanup that he dumped several
17 drums into an excavated trench?

18 MR. CHEESEMAN: I don't believe
19 that was part of his testimony.

20 MR. SEGAL: Wait a minute. Can
21 you give me a reference? I've got all the
22 transcripts. When did he testify to that?

23 MR. SCHLICTMANN: Weeks ago.

24 MR. SEGAL: When was the date,

1 May 24th?

2 MR. SCHLICTMANN: He was
3 present when drums were put into the trench.

4 MR. CHEESEMAN: I don't think
5 he said that either.

6 MR. SCHLICTMANN: Did he say
7 drums were put into the trench or not?

8 MR. CHEESEMAN: He was there,
9 and he saw some drums already in the trench.

10 MR. SCHLICTMANN: They weren't
11 there --

12 MR. SEGAL: Why fight about
13 it? Give me the page and date, and I just
14 want to look at it.

15 MR. SCHLICTMANN: Well, let's
16 see if I can get Bill to agree to a fair
17 characterization.

18 MR. SEGAL: I don't want to
19 characterize --

20 MR. SCHLICTMANN: Mr. Kelley
21 testified that drums were in that trench.

22 MR. CHEESEMAN: And it took
23 place 1974.

24 MR. SCHLICTMANN: That's right.

1 MR. SEGAL: What's the
2 question? You you made some statement about
3 Kelley's testimony. I'm not accepting it one
4 way or another.

5 THE WITNESS: You asked me
6 if --

7 MR. SEGAL: Let's finish. I'm
8 not saying he's accurately phrasing Kelley's
9 question or not, but based upon that, he has a
10 question for you.

11 Q. Do you have any reason to believe that Mr.
12 Kelley, Paul Kelley was involved in the
13 placing of drums into a pit to the rear of the
14 plant?

15 A. Okay. Let me get the question right. Do I
16 have any reason --

17 Q. Any reason.

18 A. -- not to believe that he didn't do it.

19 Q. No. Do you have any reason to believe that he
20 did?

21 MR. SEGAL: Do you understand
22 the question? Based upon your knowledge,
23 experience?

24 A. It's possible.

1 MR. SEGAL: Yes, but anything
2 is possible in this life. The question is:
3 Do you have any specific knowledge?

4 A. I have no knowledge.

5 Q. I'm asking you if there's any reason to
6 believe, however you received that
7 information?

8 MR. SEGAL: Did anybody ever
9 tell you that led you to believe that Paul
10 Kelley put some drums into a pit?

11 A. No, I wouldn't believe it.

12 MR. SEGAL: That wasn't the
13 question. The question was: Did anybody ever
14 tell you?

15 BY MR. SCHLICTMANN:

16 Q. Mr. Barbas, during the time that you worked at
17 the plant up until today, do you have any
18 reason to believe that drums were placed into
19 a pit to the rear of the plant at any time?

20 MR. CHEESEMAN: He saw them
21 pull some out.

22 BY MR. SCHLICTMANN:

23 Q. I'm asking, do you have any such knowledge?

24 MR. SEGAL: You have to

1 understand the question. Do you understand
2 the question? The question merely is: Do you
3 have any reason? Don't go into hindsight. Go
4 into, first, do you have any reason to believe
5 that somebody at the plant put drums into a
6 pit; in other words, did anybody say to you,
7 "John's put drums into a pit"?

8 A. You said Paul Kelley, right?

9 Q. I'm not talking about Paul Kelley; I'm talking
10 about Nick.

11 MR. SEGAL: Nick. Do you have
12 any information?

13 A. The only information I have is that I saw -- I
14 think it was four to six drums being pulled
15 out of the ground that I knew nothing about
16 that I was very surprised to see come out of
17 the ground.

18 MR. SEGAL: When was that?
19 When was that that you learned that?

20 THE WITNESS: Is he going to
21 ask me the question?

22 MR. SEGAL: No. Let me ask. I
23 want to clear this up. When did you see the
24 excavation of drums?

1 THE WITNESS: When the EPA was
2 there. I don't know the date.

3 MR. SEGAL: '82, '83?

4 THE WITNESS: Yes.

5 MR. CHEESEMAN: June of '83.

6 MR. SEGAL: That's the first
7 time that you have ever had any hints that the
8 drums were buried in a pit; is that right?

9 THE WITNESS: Yes.

10 MR. SEGAL: Okay. Nobody told
11 you anything before that date that would
12 indicate that drums were buried in a pit; is
13 that fair to say?

14 THE WITNESS: Nobody indicated
15 that there was.

16 BY MR. SCHLICHTMANN:

17 Q. Now, I'm asking you, do you have any reason to
18 believe -- and I mean any reason -- to believe
19 that drums were buried on the property, on the
20 Grace plant, at the time you were working
21 there? Do you have any reason to believe
22 that?

23 A. I'm a little confused now. I mean, we were
24 just talking about one specific instance.

1 Q. I understand.

2 MR. CHEESEMAN: He's asking
3 you, apart from the fact that he just told you
4 that Paul Kelley testified to that, forget
5 that for a minute.

6 MR. SCHLICTMANN: Forget that.

7 MR. SEGAL: And forget the fact
8 that you saw drums excavated.

9 THE WITNESS: Any other time?

10 MR. SEGAL: Are we putting that
11 aside? Are you saying because you saw some
12 drums excavated, do you now have reason to
13 believe that somebody put some drums into a
14 pit; is that what you're really coming to?

15 MR. SCHLICTMANN: No. Right
16 now I just want to know in general.

17 BY MR. SCHLICTMANN:

18 Q. Mr. Barbas, from any source, do you have
19 reason to believe that drums were buried on
20 the Grace property at any time?

21 A. No.

22 Q. You have no reason to believe that?

23 A. No.

24 Q. I thought you said you saw drums being pulled

1 out of the pit?

2 A. You said excluding that.

3 MR. SEGAL: I said putting that
4 aside. All right. Why don't you ask him.

5 Is your own reason to believe
6 that there might have been drums put in the
7 pit because you saw something pulled out of a
8 pit?

9 MR. SCHLICTMANN: That's a good
10 question from your perspective.

11 BY MR. SCHLICTMANN:

12 Q. But a better question from my perspective is,
13 Mr. Barbas, prior to the time you saw drums
14 being pulled out of the pit, --

15 A. Okay. Prior.

16 Q. -- prior to that time, did you have any reason
17 to believe that -- from whatever source --
18 that drums had been buried on the Grace
19 property at any time?

20 A. No.

21 Q. Had you ever heard anybody joke about it?

22 A. Never.

23 Q. You never heard Frank Kelley joke about it?

24 A. No.

1 Q. You never heard any employee joke about it?

2 A. Before?

3 Q. Before the drums were pulled out of the pit.

4 A. I never heard about it.

5 Q. You never talked to any other employee at the
6 Grace site who ever indicated, in any form or
7 fashion, that drums may have been buried on
8 the Grace property prior to the times that the
9 drums were pulled out of that pit?

10 A. No.

11 Q. Never, at any time?

12 A. Never.

13 Q. Not in any conversations with Mr. Shallin?

14 A. Never.

15 Q. Not in any conversations with Dick Stewart?

16 A. Never.

17 Q. Not in any conversations with Al Love?

18 A. With Al Love?

19 Q. Yes.

20 A. Before the excavation?

21 Q. Before the excavation.

22 A. No.

23 Q. Not any conversation with any other human
24 being?

1 A. No.

2 MR. SEGAL: Well, that's a
3 totally unfair question, because that applies
4 that he talks to animals. Of course he talks
5 to human beings. Did you ever say to
6 yourself, "Jeez, there were drums buried here
7 on the property"?

8 BY MR. SCHLICTMANN:

9 Q. Did you have any reason to believe that drums
10 had been buried in your pit, the one you
11 poured drums into?

12 A. No.

13 Q. No indication was ever made at the time or
14 subsequently that drums were placed into that
15 pit?

16 A. No.

17 Q. Do you have any reason to believe right now
18 today, as you sit here, --

19 A. Right now.

20 Q. -- that the pit in which you poured drums into
21 also drums were buried or placed?

22 A. (Witness nodded negatively.)

23 MR. CHEESEMAN: When he says
24 "any reason", he's referring also to what you

1 saw pulled out of the pit.

2 A. I don't believe that there were drums buried
3 in the pit that I poured the liquid from 10 to
4 20 drums.

5 Q. Listen to my question again. Do you have any
6 reason to believe now, as of this moment, that
7 any drums were placed into the pit in which
8 you poured drums?

9 A. No.

10 Q. You do not?

11 A. I don't think so.

12 Q. All right.

13 MR. SEGAL: Let's suspend.

14 Okay? Ten minutes.

15 [Whereupon, the deposition was
16 suspended for the luncheon
17 recess.]

18

19

20

21

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24

1 A. No.

2 Q. That's not where the pit that you have
3 testified pouring things in was?

4 MR. SEGAL: What are we talking
5 about; what's the spot?

6 MR. CHEESEMAN: Looking at
7 Exhibit 5.

8 MR. SEGAL: All right. What
9 spot are we looking at?

10 MR. SCHLICTMANN: Right.

11 THE WITNESS: He's talking
12 about this spot right here. (Indicating.)

13 MR. CHEESEMAN: Do you want me
14 to put a blue circle around where you're
15 talking about so there's no question?

16 MR. SCHLICTMANN: Absolutely.

17 MR. CHEESEMAN: I'm putting a
18 blue circle around the white slash, and I'll
19 put the letter S for "slash" around it. And
20 now the record will show what he's talking
21 about.

22 MR. SCHLICTMANN: I'll agree
23 with that.

24 THE WITNESS: Your question

1 again, please?

2 BY MR. SCHLICTMANN:

3 Q. That isn't where the pit was you're talking
4 about?

5 A. No, to the the best of my recollection.

6 MR. SEGAL: The oblong circle
7 where it says "S", is that where the pit was?

8 THE WITNESS: Yes. I told him
9 to my knowledge, it wasn't.

10 MR. SEGAL: Okay, fine.

11 BY MR. SCHLICTMANN:

12 Q. Now, do you see that the rectangular white area
13 with the black spot in the middle?

14 A. This one here? (Indicating.)

15 Q. Yes.

16 MR. SEGAL: Off to the right.

17 BY MR. SCHLICTMANN:

18 Q. Okay, we'll put a blue square around it.

19 MR. CHEESEMAN: I'm putting a
20 blue square surrounding the white area with
21 the black spot in it, and I'm putting "BS",
22 which stands for "black spot".

23 BY MR. SCHLICTMANN:

24 Q. All right.

1 Do you have any knowledge about
2 that at all? Do you have any knowledge what
3 that was on the property or how it got there?

4 A. No.

5 Q. Did you ever see any excavation done in that
6 part of the property?

7 A. I've seen some excavation done, but I think it
8 was when they were doing Cummings Park they
9 did some channel work.

10 Q. I'm asking if you saw any excavation at any
11 time when you were associated with the Grace
12 plant in that area that is marked with a blue
13 square?

14 A. No.

15 Q. That wasn't the area where your pit was, where
16 you poured the drums?

17 A. No.

18 Q. And you have no knowledge as to whether
19 anything was ever done during the period you
20 were with the Grace plant at that area of the
21 plant indicated by the blue square?

22 A. No.

23 MR. SEGAL: When you say
24 "anything", you mean excavation?

1 MR. SCHLICTMANN: Excavation or
2 anything else.

3 MR. SEGAL: Do you understand
4 the question?

5 THE WITNESS: Yeah.

6 MR. SEGAL: Can you associate
7 any activity at all with the BS square on
8 exhibit -- what's it?

9 MR. CHEESEMAN: 5.

10 MR. SEGAL: 5.

11 THE WITNESS: No, I can't.

12 BY MR. SCHLICTMANN:

13 Q. Can you associate any activity at the Grace
14 plant with the blue circle with the slash?

15 MR. CHEESEMAN: The one marked
16 S.

17 A. No, I can't.

18 Q. You have no knowledge about that?

19 A. No.

20 Q. All right.

21 I'm going to show you Kelley
22 Exhibit No. 1 and ask you to examine that.

23 [Whereupon, the document was
24 tendered to the witness for

1 examination.]

2 [Pause.]

3 BY MR. SCHLICTMANN:

4 Q. On that exhibit you see a blue line there; do
5 you see that?

6 MR. CHEESEMAN: The one marked
7 A.

8 BY MR. SCHLICTMANN:

9 Q. Kelley Exhibit 1. I want you to examine
10 that. Do you know any activity that ever took
11 place in that part of the property at any time
12 during the time that you were associated with
13 the Grace plant?

14 A. Any activity pertaining to waste disposal?

15 Q. Yes.

16 A. No.

17 Q. All right.

18 You see where the blue line is
19 with the A, with the letter A?

20 MR. SEGAL: Is this exhibit --

21 MR. SCHLICTMANN: Kelley 1.

22 BY MR. SCHLICTMANN:

23 Q. And there's a blue line with an A on it.

24 A. Yeah, I see it. I see what you're talking

1 about.

2 MR. CHEESEMAN: This is the A.

3 THE WITNESS: You're saying A.

4 MR. SCHLICTMANN: I'm sorry.

5 B.

6 MR. SEGAL: You're talking
7 about the heavy blue line with the B?

8 MR. SCHLICTMANN: The heavy
9 blue line with the B.

10 MR. SEGAL: Fine, on Kelley No.

11 1.

12 BY MR. SCHLICTMANN:

13 Q. Are you aware of any activity taking place at
14 the Grace property having to do with waste
15 disposal at that site?

16 A. No.

17 Q. Is the blue line on Kelley Exhibit 1 where the
18 letter B is, is that the pit where you poured
19 your drums into?

20 MR. CHEESEMAN: Okay, I'm going
21 to ask him to take a second before he answers
22 that question to realize that Kelley Exhibit 1
23 shows the building before the second addition
24 was built, and, therefore, the distances that

1 appear on the photograph may be misleading.

2 MR. SCHLICTMANN: I
3 understand. Examine both photographs.

4 MR. SEGAL: Examine them, then
5 he'll ask you the question again.

6 MR. CHEESEMAN: And you
7 understand that I'll object under the
8 reservation of objections in use of the
9 aerials.

10 MR. SCHLICTMANN: Sure.

11 A. I've observed it.

12 Q. What's your answer?

13 A. Give me the question again.

14 Q. The question is: On Kelley Exhibit 1 where
15 the blue line is marked B, is that the area
16 where you poured drums into the pit?

17 A. I don't think so.

18 Q. All right.

19 You had time to examine that
20 photograph?

21 A. Yes.

22 Q. What's the reasons why you say you don't think
23 so?

24 A. The reason why is, if I'm not mistaken,

1 looking at this photograph and this photograph
2 here, (indicating), I would say it would be
3 closer.

4 MR. CHEESEMAN: He was
5 referring to Exhibit 5 as well as Kelley
6 Exhibit 1.

7 A. Because the lines are going from north to
8 south.

9 Q. The blue line is?

10 A. Yes.

11 Q. Yes.

12 A. And the diagram I've made goes like east to
13 west.

14 Q. Right.

15 A. That's how I made the observation.

16 Q. All right.

17 Also, is it important to you at
18 all that Kelley Exhibit 1 shows the first
19 addition and not the second addition as
20 opposed to Barbas Exhibit 5 shows the second
21 addition in determining that blue line on
22 Kelley Exhibit 1 with the B is not the area
23 where you dug the pit or where you poured the
24 drums into the pit?

1 A. Yes, I would say it's not the same area.

2 Q. And give me all the reasons why you say that.

3 A. Well, I think that I had made the observation
4 from looking at --

5 Q. Barbas Exhibit 5?

6 A. -- Barbas No. 5 in comparison with the corner
7 of the warehouse, the northerly -- if I'm not
8 mistaken -- northeasterly corner.

9 Q. Yes.

10 A. Where this --

11 Q. Yes.

12 A. -- photograph, Kelley No. 1, --

13 Q. Yes.

14 A. -- this line here is too far to the east,
15 that's why I made my observations. I don't
16 think it's the same area.

17 MR. SEGAL: Wait a minute.

18 This line is B on Exhibit Kelley 1, is that
19 what you're referring to?

20 THE WITNESS: Yes.

21 BY MR. SCHLICTMANN:

22 Q. And the reason you don't believe that the blue
23 line B on Kelley Exhibit 1 is not the area
24 where you dug, where you poured the drums into

1 the pit is, is because that blue line B on
2 Kelley Exhibit 1 is far -- is more east or
3 below the warehouse --

4 A. Yes.

5 Q. -- than where you remember the pit being?

6 MR. CHEESEMAN: I object to the
7 form of the question. I think you got too
8 many negatives.

9 MR. SCHLICTMANN: Well, I'll
10 ask it positively.

11 MR. SEGAL: Well, ask the
12 question, then.

13 MR. SCHLICTMANN: We got one
14 answer. I just wanted to make sure his answer
15 was that was the reason.

16 MR. SEGAL: What's the
17 question, now? You confused me.

18 MR. SCHLICTMANN: I'll
19 unconfuse you.

20 MR. SEGAL: All right.

21 BY MR. SCHLICTMANN:

22 Q. Is the reason, Mr. Barbas, you say the blue
23 line with the letter B on Kelley Exhibit 1 is
24 not the area where you remember pouring the

1 drums into the pit because the blue line B on
2 Kelley Exhibit 1 is much further east of the
3 warehouse, the corner of the warehouse, than
4 you remember the pit where you poured the
5 drums?

6 A. Correct.

7 Q. Is that right?

8 A. Yes.

9 Q. So, is it fair to say, then, in your
10 determining where to draw the pit, that you
11 poured the drums into, that one of the things
12 that you used to determine where you should
13 draw that pit that you poured the drums into
14 on Barbas Exhibit 5 was that you used the
15 corner of the warehouse?

16 MR. SEGAL: This is Barbas 5.

17 A. Yes.

18 Q. So, you were trying to judge, as best you can,
19 where to place the drums, and the reference
20 point that you used was the northeast corner
21 of the warehouse?

22 A. Yes.

23 Q. Now, are you familiar with the fact that prior
24 to the construction of the second addition, in

1 other words, during the time that the property
2 existed with the first addition, that there
3 was an area out to the rear of the property
4 which was generally mowed and used to play
5 various activities?

6 A. Yes.

7 Q. For people at the plant?

8 A. Yes.

9 Q. And would you agree that in examining Barbas
10 Exhibit 2 that that area is shown on that
11 exhibit?

12 MR. SEGAL: Look at Barbas 2
13 and see if you can find the recreation field.

14 A. This. (Indicating.)

15 Q. Now, looking at Kelley Exhibit 1, do you agree
16 that on Kelley Exhibit 1 there's a blue line
17 circling the area where it was mowed and used
18 as a playing field?

19 A. Yes.

20 Q. Is that right?

21 A. (Indicating.) Um-hmm. Yes.

22 Q. And you remember that playing field?

23 A. Yes.

24 Q. Now, when you remember pouring the drums into

1 the pit, you remember that there wasn't a
2 playing field there anymore?

3 A. I don't remember that.

4 Q. All right.

5 Well, on Barbas Exhibit 5, does
6 it indicate that the playing field is still
7 there?

8 MR. SEGAL: I'm not sure that's
9 quite fair. It's not -- looking at Barbas 5
10 can you find the playing field on it? Do you
11 see it?

12 A. The reason why is that this photograph here is
13 more clearer; it's clearer.

14 MR. CHEESEMAN: There's no
15 second addition; on the photograph here in
16 Exhibit 2 shows only the first addition
17 whereas the other photograph you referred him
18 to, Exhibit 5, shows the second addition
19 which, obviously, had built out onto the area
20 that had been the playing field.

21 BY MR. SCHLICTMANN:

22 Q. Had the second addition built onto the area
23 you called the "playing field"?

24 A. I imagine it did. You can see it by the

1 photograph.

2 Q. That's your memory as well, isn't it?

3 A. It came out a little bit into it, I would
4 say.

5 Q. After the second addition was built, the area
6 was not kept as a playing field anymore; isn't
7 that your memory?

8 A. I have no recollection of that.

9 Q. Well, didn't it stop after awhile, it was
10 allowed to be overgrown and --

11 A. Yes.

12 Q. -- after that, the second addition was built?

13 A. I would say yes.

14 Q. Now, in thinking back to where this pit was
15 when you poured these drums, and knowing where
16 the playing field was, and knowing where the
17 second addition was built, to your knowledge,
18 based on what you know now, was the pit where
19 you poured the drums on the area that you have
20 circled as the playing field?

21 A. On the area that I have circled as a playing
22 field in this photograph, Barbas 2?

23 Q. Well, you look at Kelley Exhibit 1 where
24 there's a circled playing field.

1 A. Kelley 1?

2 Q. Yes.

3 MR. CHEESEMAN: What was the
4 question, Jan?

5 BY MR. SCHLICTMANN:

6 Q. Did the pit that you remember pouring drums
7 into, did that -- was that pit in anywhere on
8 the area that you've called the playing field?

9 MR. CHEESEMAN: Remember that
10 this only shows the first addition.

11 A. And you also said the playing field is this
12 area. (Indicating.)

13 Q. Well, you've told me that you recognize that
14 circled blue --

15 A. Yes, because it's a clearer photograph.

16 Q. On Kelley 1.

17 A. I'd say it's close to it. I can't be
18 approximate.

19 Q. Now, in examining Barbas Exhibit 1 -- I'm
20 sorry, 2, which is the same picture as Kelley
21 Exhibit 1, would you be able to indicate on
22 that photograph where the pit -- where you
23 poured the drums later was excavated?

24 A. On this photograph? (Indicating.)

1 Q. Yes.

2 MR. SEGAL: Wait a minute. I
3 don't understand the question. The pit was
4 excavated; the drums were excavated; what do
5 you want to know?

6 MR. SCHLICTMANN: I want to
7 know if he can show me on Barbas Exhibit 2
8 again where that pit was that he poured the
9 drums into.

10 MR. CHEESEMAN: Even
11 recognizing that Barbas Exhibit 2 doesn't show
12 a time when the second addition had yet been
13 built?

14 MR. SCHLICTMANN: That's
15 right.

16 MR. CHEESEMAN: Again I will
17 object to that use.

18 BY MR. SCHLICTMANN:

19 Q. Let me ask: Can you do it?

20 MR. SEGAL: Take a look at
21 this.

22 A. I can give you a general idea. I can't be
23 specific.

24 Q. Let me ask before you do it. Would you be

1 able to use reference points on Barbas Exhibit
2 2 to figure out where you remember the pit
3 where you poured the drums was?

4 A. I could do that.

5 Q. What reference points would you be using?

6 A. The corner.

7 Q. Of the warehouse?

8 A. Yes.

9 Q. And what other reference point?

10 A. This door, (indicating), and the edge of the
11 fence.

12 Q. The edge of the fence?

13 A. Yes.

14 MR. CHEESEMAN: Now, the fence
15 was moved when the second addition was built,
16 so you have to be careful about that.

17 MR. SCHLICTMANN: That's
18 right.

19 MR. CHEESEMAN: I'm going to
20 object to this process because it's confusing
21 the witness.

22 BY MR. SCHLICTMANN:

23 Q. Mr. Barbas, before you do anything, I don't
24 want you to be confused.

1 In looking at Barbas Exhibit 2
2 and Barbas Exhibit 5, there's more
3 construction there on Barbas Exhibit 5, and
4 you remember that the pit where you poured the
5 drums was on the property after the second
6 addition was built?

7 A. Yes.

8 Q. And drawing it on Exhibit 5, you used the
9 northeast corner to determine where it was?

10 A. Yes.

11 Q. Now, looking at Barbas Exhibit 2, do you feel
12 that you could indicate on that exhibit,
13 knowing now that that exhibit doesn't show the
14 second addition but still having the reference
15 point of the northeast corner of the
16 warehouse, do you feel that you could indicate
17 on Barbas Exhibit 2 where the pit was that you
18 poured the drums into, realizing that the pit
19 appeared on the property after the second
20 addition, after the period of time shown in
21 that photograph, Barbas Exhibit 2?

22 MR. SEGAL: What he's saying
23 is, simply, does the warehouse give you a key
24 to find the pit; is that really it?

1 MR. SCHLICTMANN: Yes.

2 MR. SEGAL: You're using the
3 warehouse, really, as your guideline. Can you
4 pick out the pit?

5 A. Yes.

6 Q. Is that true?

7 A. Yes.

8 Q. And would you indicate on Barbas Exhibit 2
9 using a blue pen where you would place the
10 pit, which later appeared on the property in
11 which you poured the drums?

12 MR. SEGAL: Into which?

13 MR. SCHLICTMANN: Into which
14 you poured the drums.

15 MR. CHEESEMAN: Well, go ahead
16 and draw it where you want to draw it.

17 A. I'd say something like that. (Indicating.)

18 MR. CHEESEMAN: It's funny
19 because he's got it under where the parking
20 lot was after the second addition was built.

21 BY MR. SCHLICTMANN:

22 Q. Look at it, as best you can. Take your time
23 and examine and look at the reference points.
24 Look at where the warehouse is; look at the

1 area where the first addition is, behind the
2 first addition; look at Barbas Exhibit 5 where
3 the second addition came to, to make the best
4 approximation to where that pit was that you
5 poured the drums.

6 A. Right there. (Indicating.)

7 Q. You feel comfortable putting the pit there?

8 A. Yes.

9 Q. Put P there?

10 MR. CHEESEMAN: I think we
11 called it "pit" before. P-I-T.

12 [Whereupon, the witness so
13 complied.]

14 BY MR. SCHLICHTMANN:

15 Q. Now, if you were standing at the northeast
16 corner of the warehouse and you draw a line
17 parallel to the warehouse following the line
18 of the warehouse, and you walked along that
19 line from the northeast corner which followed
20 the line, the line now followed the whole line
21 of the warehouse -- do you understand what I'm
22 saying now?

23 A. Yes.

24 Q. Now, if you walk straight now, would you fall

1 into that pit there?

2 A. I would say so.

3 Q. You would?

4 A. Yes.

5 Q. And how many feet would you have to walk along
6 that straight line along the warehouse before
7 you fell into the pit?

8 A. 30 to 40, 50, not more than that. Around that
9 area.

10 Q. 30 to 40 feet?

11 MR. CHEESEMAN: Although you
12 did testify that you thought it was about a
13 hundred feet from the warehouse.

14 A. I thought I said a hundred feet this way.
15 (Indicating.)

16 Q. All right.

17 A hundred feet from the main
18 building?

19 A. Yeah. This is a general idea of where I think
20 it would be.

21 Q. I understand.

22 Looking at Barbas Exhibit 5
23 now, again, I'm going to ask you to assume an
24 imaginary line running parallel to the

1 warehouse, following the wall of the
2 warehouse, the eastern wall of the warehouse
3 and you're walking straight along that line,
4 straight, now, following the same line that
5 follows the warehouse wall, would you then
6 walk into the pit?

7 A. Yes.

8 Q. Yes?

9 A. (Witness nodded affirmatively.)

10 Q. And approximately how far would you have to
11 walk from the warehouse along that line, that
12 imaginary line, before you fell into the pit?

13 A. I'd say the same, 30, 40, 50 feet.

14 Q. All right.

15 Now, if you draw a line
16 straight back from the main building to the
17 second addition, all right, an imaginary line
18 with the main building, and it followed the
19 southern wall of -- if it followed a line from
20 the door --

21 MR. CHEESEMAN: Well, wait a
22 minute. So, the door would be that
23 distance --

24 BY MR. SCHLICTMANN:

1 Q. If you followed a straight line from the door,
2 all right, straight line back, if you walk,
3 would you fall into the pit?

4 A. I would say no. I still say no.

5 Q. Okay.

6 If you draw a line, straight
7 line, now, and you moved it over to where the
8 corner of the fence, all right, and you walked
9 straight back, all right, based on your
10 memory, now, if you walk straight back from
11 that fence corner, would you will fall into
12 the pit?

13 A. No.

14 Q. Okay.

15 Do you know that there is a
16 structure appearing on the eastern wall which
17 indicates the supports for the roof?

18 A. Okay.

19 Q. You can see those; right?

20 A. Yes. These things. (Indicating.)

21 Q. If you went to the first one, which is next to
22 the door, right, the first one, and you draw a
23 straight line back and you walked from that
24 first support straight back, would you fall

1 into the pit?

2 A. Yes.

3 Q. How many feet would you have to walk from that
4 support that appears on the eastern wall right
5 next to the door before you fell into the pit?

6 A. Say, a hundred feet.

7 Q. One hundred feet?

8 A. About a hundred feet.

9 Q. All right.

10 Now, Mr. Barbas, you're
11 familiar with the dimensions of the warehouse?

12 A. No.

13 Q. Oh! You've seen it every day?

14 A. Yeah, you said familiar with the dimensions.

15 Q. Well, do you know, roughly, the size of the
16 warehouse?

17 A. Roughly.

18 Q. All right.

19 Do you know approximately how
20 long or how wide the warehouse is?

21 A. No.

22 Q. You don't. Okay.

23 At some time, Mr. Barbas, you
24 remember that there was an investigation at

1 the Grace plant conducted by Mr. Dick Stewart?

2 A. Am I aware of it?

3 Q. Yes.

4 A. Yes.

5 Q. You are.

6 Now, prior to your talking to
7 Mr. Stewart, did Mr. Shallin talk to you and
8 indicate to you that he was investigating the
9 disposal of material at the plant?

10 MR. SEGAL: Wait a minute. I'm
11 unclear about the question. When you're
12 saying did Shallin indicate, Shallin was
13 investigating or he, Stewart, was
14 investigating?

15 MR. SCHLICTMANN: No, he,
16 Shallin, was investigating.

17 A. I don't remember that.

18 Q. Well, do you remember having a conversation
19 with Mr. Shallin when he was asking about
20 questions of waste disposal?

21 A. No.

22 Q. At any time?

23 A. No.

24 Q. So, do you remember the day that Mr. Stewart

1 questioned you about waste disposal at the
2 plant?

3 A. Yes.

4 Q. Do you remember that was on January 28th of
5 1982?

6 A. I don't remember it as that, but I remember
7 the day.

8 Q. You made a list for Mr. Stewart, is that
9 right? Did you draw up a list for Mr.
10 Stewart?

11 A. A list for Mr. Stewart?

12 Q. Yes.

13 A. I made a list. I don't know if it was for Mr.
14 Stewart.

15 Q. Well, who did you think it was for?

16 A. Well, Paul Shallin asked me to make a list.

17 Q. Is this after the time you talked to Mr.
18 Stewart or before?

19 A. I'm not sure about that.

20 Q. What did Mr. Shallin say? Why did he say he
21 wanted you to make up a list?

22 A. Make up a list of paints and solvents that
23 we've used in the past and up to the present.

24 Q. Okay.

1 Did he tell you what to
2 indicate about these materials; in other
3 words, the quantities and the period of time
4 you used them?

5 A. No.

6 Q. He just asked for a list?

7 A. A list.

8 Q. Of all the chemicals you used in the past and
9 in the present up until 1982?

10 A. Yes, to the best of my recollection.

11 Q. And you made that list?

12 A. Yes.

13 Q. All right.

14 And you made this list prior to
15 talking to Mr. Stewart?

16 A. I'm not sure about the time.

17 Q. Did you ever go over this list with Mr.
18 Shallin or Mr. Stewart?

19 A. Not to the best of my knowledge.

20 Q. You just submitted it to Mr. Shallin?

21 A. Yes.

22 Q. How long did it take you to make up the list?

23 A. About three days. Three or four days. I
24 didn't work on it steady. I had to do my

1 other work, too.

2 Q. What did you do in order to make up the list?

3 A. A physical inventory, and then just try to
4 remember what we used in the past.

5 Q. Did you talk to anybody?

6 A. I don't remember.

7 Q. All right.

8 Based on your memory?

9 A. Right.

10 Q. Did you consult any documents?

11 A. I might have looked at some documents, but I
12 don't remember any specific documents.

13 Q. And after you submitted the list, did you at
14 any time go over the list with Mr. Shallin or
15 anybody else?

16 A. No.

17 Q. Did anybody ask you any questions about the
18 list?

19 A. No, not that I remember.

20 Q. Did you keep a copy of the list?

21 A. I don't remember that.

22 Q. But you did --

23 A. I did give Shallin a list.

24 Q. Okay.

1 Now, you remember that Mr.
2 Stewart talked to you?

3 A. Yes.

4 Q. Okay.

5 I want you to tell me what --
6 when you remember him talking to you, how did
7 he approach you?

8 A. I think Mr. Stewart and another gentleman
9 wanted to see me in the conference room, and I
10 went into the conference room.

11 Q. Did somebody come and tell you that they
12 wanted to see you?

13 A. I don't remember that, either that or I was
14 paged or Paul Shallin came and told me.

15 Q. You don't remember?

16 A. I don't remember.

17 Q. So you went into the conference room; Mr.
18 Stewart and another person was there?

19 A. Yes.

20 Q. Was Mr. Shallin there?

21 A. I don't think so.

22 Q. Now, I want you to tell me exactly what took
23 place in that conference room, what you said
24 or Mr. Stewart or anybody else said from

1 beginning to end?

2 A. All that I can remember is -- that is, the
3 conversation started off with going over my
4 work records, and telling me that I was doing
5 a good job and how proud the company was of me
6 of not having any serious accidents or fires
7 or explosions or any of that, anything like
8 that. And then, the -- he asked me if I knew
9 anything about dumping of chemicals or
10 something like that between the years 1968 and
11 1970, which I told him that I was not around
12 then. I said I was in the Service. And then,
13 he started asking me questions about what I
14 did in the Service.

15 Q. Tell me what you remember him saying and what
16 you said?

17 A. I told him I was in Viet Nam, that he wanted
18 to know where. What my job was. I told him I
19 was an MP and things of that nature.

20 Q. Tell me what you remember telling him and
21 exactly what he was telling you and what you
22 remember telling him.

23 A. That's about all I remember.

24 Q. All right.

1 You told him you were an MP in
2 the Service, and what did he say to that?

3 A. He said, "Did you see any action over there?"
4 And I just said, "I saw some." Things of that
5 nature, I guess.

6 Q. Well, what are you remembering now?

7 A. Most of it just seemed to be like praise of,
8 "you're doing a good job", and he just asked a
9 couple of times about 1968 to 1970, and I said
10 I wasn't around. I have no idea. I said -- I
11 told him that there were other people painting
12 and doing my job while I was gone. As far as
13 I knew, there was a couple of other people
14 that did the job, that they didn't pan out. I
15 guess they left, and Joe Meola, I think, took
16 over my job for awhile till I got back. He
17 said they had to hold my job for me where I
18 was a veteran and things like that.

19 Q. Yes. Keep going.

20 A. That's about it.

21 Q. Well, now, tell me what you remember happening
22 after you finished that conversation of your
23 Viet Nam experience?

24 A. And I think he might have asked about any

1 dumping in the back.

2 Q. All right.

3 How did he ask? Tell me
4 exactly what you remember him asking.

5 A. He asked again about 1968 to '70, and I said I
6 wasn't around. I had no idea.

7 Q. Yeah.

8 A. And he said -- he asked about "do you know if
9 there was any dumping of, you know, the paint
10 sludge", he was interested in the paint sludge
11 and things like that.

12 Q. Tell me exactly, now -- I don't want you to
13 tell me "things like that". I want you to
14 tell me what you remember him saying and what
15 you remember you saying. Tell me exactly what
16 you remember saying about the paint sludge.

17 A. He said, "Have you been taking the paint
18 sludge out in the back?" I said, "Yes." And
19 from that point, he asked some more questions,
20 but I don't remember what they were, and he
21 said he was all done with me.

22 Q. Well, wait a minute.

23 Did he ever ask, "Did you ever
24 participate in any of the dumping in the back

1 of the property?"

2 A. He didn't ask me about dumping in the back of
3 the property. He asked about dumping paint
4 sludge from the paint booth.

5 Q. All right.

6 Other than the paint booth, did
7 he say anything about dumping anything else,
8 any other liquid or waste material?

9 A. (Witness nodded negatively.)

10 Q. "What did you do about dumping the paint
11 sludge" -- did he ask you that?

12 A. Yes.

13 Q. What did you tell him?

14 A. I told him that we put the paint sludge out in
15 the back.

16 Q. Right. What did you tell him about it.

17 A. That we put it out in the back, and that we've
18 been doing it all along.

19 Q. When you say "we", who did you say?

20 A. Well, anybody who takes the paint sludge out.
21 Joe and myself. Any of the painters who would
22 have been there.

23 Q. Who were they?

24 A. I don't know who those people were in my

1 absence.

2 Q. In your absence?

3 A. Yes.

4 Q. Other than that, it would have been you and
5 Joe Meola?

6 A. I would have to say yes, other -- there was
7 somebody helping me in the summertime,
8 part-time help.

9 Q. Now, so, you told Mr. Stewart that you had
10 been dumping the paint sludge right along?

11 A. Yes.

12 Q. Okay.

13 What did he say to that?

14 A. He just said, "Well, we're on a factfinding."

15 Q. Did he ask you where you dumped it?

16 A. Yes. I told him.

17 Q. What did he say, "Where did you dump it?"

18 A. Yes. I told him to the rear of the plant.

19 Q. Did you say where to the rear of the plant?

20 A. I don't think I was specific.

21 Q. Did he ask you to show him?

22 A. No.

23 Q. Did you show anybody?

24 A. No.

1 Q. He said nothing else?

2 A. That's it.

3 Q. Well, now, you said in your answers, in
4 changes there, he asked you about the
5 additions to the building?

6 MR. SEGAL: Why don't you read
7 the question and the answer.

8 BY MR. SCHLICTMANN:

9 Q. Well, you remember he asked you questions
10 about the additions?

11 MR. SEGAL: Well, can you refer
12 me to a specific point so we can all be on the
13 same wavelength?

14 BY MR. SCHLICTMANN:

15 Q. Did he ask you questions about the additions?

16 MR. SEGAL: Page 80, Line 19.

17 BY MR. SCHLICTMANN:

18 Q. He asked questions about the additions?

19 A. He asked if I knew anything about dumping
20 drums between 1968 and 1970.

21 Q. Yes?

22 A. I told him I was in the Service.

23 Q. He asked you specifically about dumping drums
24 between 1968 and 1970?

- 1 A. That's right.
- 2 Q. Is that the phraseology that he used?
- 3 A. I think it was dumping or emptying, something
4 to that effect.
- 5 Q. How about burying?
- 6 A. That word, I don't think, was brought up.
- 7 Q. He used the words "dumping drums"?
- 8 A. (Witness nodded affirmatively.)
- 9 Q. All right.
- 10 Did he say, "What do you know
11 about dumping the drums between 1968 and
12 1970?"
- 13 A. (Witness nodded affirmatively.)
- 14 Q. Did he ask you anything about dumping the
15 drums other than 1968 and 1970?
- 16 A. He didn't bring anything else up.
- 17 Q. Was he specific in saying 1968 to 1970?
- 18 A. He was specific about 1968 to 1970.
- 19 Q. And you are very clear about that?
- 20 A. Yes, I am very clear about that.
- 21 Q. Why is it so clear in your mind?
- 22 A. Because it sticks in my mind. I was in the
23 Service.
- 24 Q. Did he ask you questions about the additions

1 to the plant?

2 A. I don't remember that.

3 Q. Well, Mr. Barbas, in changes to your
4 deposition -- you submitted changes, and on
5 Page 80, Line 19 you said, I shall now read,
6 "He asked me -- referring to Dick Stewart --
7 he asked me what I knew about it. He said he
8 was fact-finding. He mentioned my good safety
9 record. He asked questions about the
10 additions." Isn't that right; isn't that what
11 you said in your changes to your deposition?

12 A. Yes.

13 Q. Now, Mr. Barbas, --

14 A. You've refreshed my memory. Thank you.

15 Q. Now, please tell me what he asked you about
16 the additions.

17 A. I think he asked me if I was present during
18 the additions, if I was there. That's all I
19 can remember about the additions.

20 Q. When the additions were built?

21 A. Yes.

22 Q. What did you say?

23 A. I said yes.

24 Q. What did he say?

1 A. I don't think he said anything else.

2 Q. I want you to stop and think; you told me you
3 didn't know and now your memory is refreshed.
4 I want you to stop and think. You realize
5 this is very important?

6 A. I know it's important.

7 Q. I want you to stop and think and search your
8 mind, take as much time as you want. I want
9 you to tell me, as best you can remember,
10 whatever Mr. Stewart indicated to you he was
11 curious about, about what you might have known
12 about additions to the main building.

13 MR. SEGAL: He's asking what,
14 if any, conversation you had with Mr. Stewart
15 about the word "additions", what you recall
16 him saying and what, if anything, you said.

17 A. I think he just asked if I was present.
18 That's all I remember.

19 Q. He said, "Were you present during the
20 construction of the additions?"

21 A. Yes.

22 Q. Now, "present" meaning were you present and
23 seeing the construction being done?

24 A. I imagine both of those. Seeing the

1 construction being done and working at the
2 same time.

3 Q. And did you tell him you saw the construction
4 of the additions?

5 A. Yes.

6 Q. What did he say to that?

7 A. That's all. I don't know if there was any
8 more conversation at all.

9 Q. Did Mr. Stewart indicate in any way whether he
10 was curious as to whether you had any
11 information whether drums might have been
12 buried underneath the additions?

13 A. He didn't give me any indication to that.

14 Q. When he brought up the additions, was it in
15 the context about finding out what you knew
16 about pouring of waste material or burying
17 waste material on the plant property?

18 A. No, I didn't get that. I didn't get that
19 message.

20 Q. Was it done at the same time when he asked
21 what you knew about the pouring of drums?

22 A. No.

23 Q. Well, you said he asked you about the pouring
24 of drums during 1968 to 1970?

1 A. Right.

2 Q. Was that at the same time he was also asking
3 you about questions whether you were present
4 during the construction of the additions?

5 A. Yes.

6 Q. It was brought up at the same time?

7 A. Yes.

8 Q. Well, did you understand from the context,
9 your understanding from the context, that Mr.
10 Stewart was interested as to whether you might
11 have had any information about the pouring of
12 drums between 1968 and 1970 when the additions
13 were being constructed?

14 A. The only thing that I could feel that he was
15 trying to ask me was if I knew anything about
16 the pouring of drums or waste between 1968
17 through 1970, and I told him I wasn't around.

18 Q. All right.

19 But he also, then, talked about
20 the additions, right?

21 A. Yeah, he asked me if I was around during the
22 additions, and I said yes.

23 Q. What was your understanding that Mr. Stewart
24 was interested in knowing about what you knew

- 1 about the additions?
- 2 A. He told me he was on a fact-finding. That's
- 3 all, and -- Fact-finding about what?
- 4 A. He never said anything else.
- 5 Q. The fact --
- 6 A. About dumping between 1968 and 1970.
- 7 Q. He was specific about it?
- 8 A. He asked about it; I know he did.
- 9 Q. He didn't indicate to you that he didn't care
- 10 about any dumping that occurred prior to 1968
- 11 or after 1970?
- 12 A. He just asked about 1968 and 1970.
- 13 Q. Is it clear in your mind that Mr. Stewart did
- 14 not indicate to you that he was interested in
- 15 knowing about any dumping that may have taken
- 16 place prior to 1968 or after 1970?
- 17 A. Yes. It seemed to me the way he was talking
- 18 to me, he was interested in 1968 to 1970.
- 19 That's all.
- 20 Q. And he wasn't interested in anything else
- 21 having to do with dumping material before 1968
- 22 and 1970?
- 23 A. I didn't get the impression that he was.
- 24 Q. He didn't ask you any questions about what you

1 knew about dumping in general?

2 A. No, not that I remember.

3 Q. Now, at that time, when you talked to Mr.
4 Stewart you knew that you had poured drums
5 into a pit at the rear of the plant?

6 A. I didn't remember at that time.

7 Q. You didn't remember it at that time?

8 A. At that time.

9 Q. You had forgotten at that time?

10 A. I imagine I had forgotten about it.

11 Q. So, you didn't mention that to Mr. Stewart?

12 A. He didn't ask me.

13 Q. And you didn't remember it at the time?

14 A. I didn't remember it at the time.

15 Q. So, he asked you about the additions, and he
16 asked you about what you knew about dumping.
17 Do you remember him asking anything else?

18 A. That's all I remember.

19 Q. All right.

20 Now, that conversation lasted
21 approximately how long?

22 A. Five, ten minutes; maybe longer.

23 Q. The person that was with Mr. Stewart, did he
24 ask any questions?

- 1 A. I don't remember him asking any questions.
- 2 Q. Did anybody else in the room ask any
3 questions?
- 4 A. I can only remember two people being there.
- 5 Q. At the end of that conversation, what did Mr.
6 Stewart say to you, if anything?
- 7 A. That's all.
- 8 Q. Did he say he was going to talk to you again?
- 9 A. He didn't say -- I don't remember him saying
10 he was going to talk to me again.
- 11 Q. After that conversation, did you ever talk to
12 Mr. Stewart again?
- 13 A. Yes.
- 14 Q. When?
- 15 A. The next day he came by, I believe he was
16 escorted with Paul Shallin, and they came over
17 to the paint shop, looked around, checked all
18 the safety equipment and things of that
19 nature, looked inside the paint lockers, and
20 the spray booth, made sure everything was, you
21 know, safe, things like that, came over and
22 told me I was doing a good job and keep up the
23 good work, and I believe that's the last time
24 I've ever seen him.

1 Q. You never saw him again?

2 A. Yes, I did see him again.

3 Q. When was that?

4 A. He came to a meeting in the Cryovac cafeteria
5 with Vin Forte, Ulf Nordin and the company
6 lawyers.

7 Q. When was this?

8 A. Maybe sometime last year.

9 Q. All right.

10 What did he say?

11 A. I don't think he said anything. I think he
12 was just present.

13 Q. Did he talk to you?

14 A. No.

15 Q. Did somebody talk at that meeting?

16 A. I think Vin Forte talked at that meeting, Bill
17 Cheeseman talked at that meeting and some
18 associates of Bill Cheeseman.

19 MR. SCHLICTMANN: Are you going
20 to allow me to inquire about this, or are you
21 raising an attorney/client privilege?

22 MR. CHEESEMAN: I don't think
23 the privilege applies to that open meeting.

24 BY MR. SCHLICTMANN:

1 Q. Will you please tell me what was said at that
2 open meeting?

3 A. That the company is going to cooperate fully
4 with the plaintiffs.

5 Q. What was the date of that meeting, now,
6 exactly? This must have been a very recent
7 meeting?

8 A. No, it wasn't. It was last year.

9 Q. Do you remember when this meeting took place,
10 at approximately what time, this meeting you
11 just referred to?

12 A. In the morning.

13 Q. No. What time? what year?

14 A. I think I said last year.

15 Q. Now, tell me exactly what you remember
16 somebody saying at that meeting, anybody that
17 spoke at that meeting?

18 A. That the --

19 Q. Who's speaking?

20 A. -- company -- I think it was Vin Forte -- that
21 the company would cooperate as much as
22 possible with the plaintiffs, that they told
23 everybody to be cooperative, things of that
24 nature.

1 Q. Cooperative with who?

2 A. With the plaintiffs.

3 Q. So, you remember that somebody at the -- You
4 don't remember who said this?

5 A. No. I don't remember; all I remember is that
6 the speaker said that we're trying to be
7 cooperative, as cooperative as possible. You
8 know, we don't have nothing to hide; that's
9 what they said.

10 Q. Okay.

11 Anything else said there?

12 A. That's about all I remember.

13 Q. Well, when they said they would be
14 cooperative, did they say that you could talk
15 to the plaintiffs' attorney?

16 A. No.

17 Q. How, exactly, were you to be cooperative with
18 the plaintiffs?

19 A. No, the company was going to be cooperative.

20 Q. But the people weren't supposed to cooperate?

21 MR. SEGAL: Why don't we just
22 get what was said, not interpretation of
23 something.

24 BY MR. SCHLICTMANN:

- 1 Q. What was your understanding of the message at
2 that meeting?
- 3 A. The company was going to try to be very
4 cooperative and try to help, you know,
5 everybody, like your side and our side, to be
6 cooperative.
- 7 Q. Did they say how the people present at the
8 meeting, if the people would have to do
9 anything?
- 10 A. If they were -- I think, approached by the
11 plaintiffs, they should notify the company
12 attorneys. That's about it.
- 13 Q. Anything else?
- 14 A. That's all I remember.
- 15 Q. All right.
- 16 Was it indicated to mean that
17 they hadn't been cooperative with the
18 plaintiffs prior to that meeting, and they
19 made a decision now to cooperate?
- 20 A. No, they always said they were being
21 cooperative. That was my understanding.
- 22 Q. That was your understanding?
- 23 A. Yes.
- 24 Q. Other than that meeting, do you ever remember

1 seeing Mr. Stewart again or ever talking to
2 him?

3 A. No.

4 Q. Now, other than the time Mr. Stewart talked to
5 you, did anybody else talk to you about any
6 knowledge you might have of dumping of waste
7 material on the plant? I'm not referring, now
8 -- I don't want to know anything about what
9 anybody who was representing you as an
10 attorney said to you, or what you said in an
11 attorney/client relationship. What I'm asking
12 you is any conversations that you have had
13 with any individual about your knowledge about
14 dumping material with Mr. Stewart?

15 MR. SEGAL: Where lawyers were
16 not present?

17 MR. SCHLICTMANN: That's right.

18 BY MR. SCHLICTMANN:

19 Q. When your lawyer was not present or somebody
20 representing you was not present.

21 A. I don't remember. I don't think anybody ever
22 did.

23 Q. Mr. Shallin never talked to you about what
24 your knowledge was at any time?

1 A. No.

2 Q. Mr. Forte ever talk to you at any time?

3 MR. SEGAL: You mean about your
4 knowledge?

5 BY MR. SCHLICTMANN:

6 Q. About your knowledge about dumping at the
7 plant?

8 A. I don't think he did.

9 Q. You never told Mr. Stewart that you had dumped
10 drums, dumped liquid material into a pit; is
11 that right?

12 A. Right.

13 Q. At any time have you ever told any individual
14 that you dumped drums of liquid into a pit?

15 A. Not to my knowledge; that, I can't remember.

16 Q. At no time has Mr. Shallin, to your knowledge,
17 ever asked you what information you had about
18 dumping of waste on the property at the Grace
19 plant?

20 MR. SEGAL: That includes both
21 dumping, pouring drums into a pit and --

22 RM. SCHLICTMANN: Dumping --

23 MR. SEGAL: -- dumping on the
24 ground?

- 1 MR. SCHLICHTMANN: Right.
- 2 A. He asked me if I remembered anything about it,
3 and I said at that time it was very vague in
4 my memory.
- 5 Q. When did he ask you that?
- 6 A. Maybe the beginning of the year. He asked me
7 if I remembered anything about it, and I said
8 no. I says it's very -- I don't remember that
9 much about it.
- 10 Q. He was meaning this year?
- 11 A. Yes.
- 12 Q. How did that take place; he stopped you at
13 work?
- 14 A. Just a conversation.
- 15 Q. What did he ask you?
- 16 A. He said, "Do you know anything about emptying
17 the barrels?"
- 18 "I don't remember."
- 19 Q. You don't remember?
- 20 A. At that time.
- 21 Q. What did Mr. Shallin say?
- 22 A. Okay.
- 23 Q. Now, Mr. Shallin was aware, to your knowledge,
24 that you dumped these drums into the pit?

1 A. Was he aware?

2 Q. At the time you did it.

3 A. He could have been.

4 Q. Mr. Barbas, did you do it on your own?

5 A. I didn't do it on my own. You asked me if he
6 was aware. Maybe he forgot.

7 MR. SEGAL: Well, it's not
8 inconsistent. Shallin could have told him to
9 go out and dump it and then not have been
10 aware that it had been done.

11 BY MR. SCHLICHTMANN:

12 Q. Well, let me ask you, to your knowledge, did
13 Mr. Shallin become aware that you had, in
14 fact, had carried out his orders to dump the
15 drums into the pit?

16 A. That's a hard question.

17 MR. SEGAL: An easier
18 question: After you poured the drums into the
19 pit, did you ever say to Mr. Shallin around
20 that time, "I poured the drums into the pit?"

21 THE WITNESS: No, I never told
22 him.

23 BY MR. SCHLICHTMANN:

24 Q. Do you have any reason to believe that Mr.

1 Shallin knew that, in fact, you had carried
2 out his order?

3 A. I don't know whether he did.

4 Q. Did you see Mr. Shallin out in the back when
5 the pit was there?

6 A. No, he wasn't out there.

7 Q. Did Mr. Shallin know about the pit that you
8 dumped the drums in?

9 A. Did I know if he knew about the pit?

10 Q. Yes.

11 A. He's the one that asked me to pour the
12 material in there.

13 Q. So, to your knowledge, then, Mr. Shallin
14 indicated to you that he was aware there was a
15 pit out there?

16 A. Yes.

17 Q. And he was the one who asked you to pour the
18 drums into it?

19 A. Right.

20 Q. Well, at any time during the time you were
21 dumping the drums into the pit or any time
22 subsequently, do you have any reason to
23 believe that Mr. Shallin knew that, in fact,
24 you had carried out his order?

1 A. I don't know that for a fact.

2 Q. Well, do you have any reason to believe that
3 he knew?

4 A. I would say that he was aware.

5 Q. All right.

6 Why do you say that?

7 A. He told -- he asked me to do it. He gave me a
8 helper.

9 Q. Yes.

10 A. And another man, Frank Kelley, and I don't
11 know if anybody else helped. I wasn't there
12 all the time.

13 Q. Um-hmm.

14 A. All I can say is, maybe he was aware, maybe he
15 forgot. I don't know.

16 Q. Maybe he forgot, but at some time after that,
17 did you have some reason to believe that he
18 knew that you had carried out the order?

19 A. I don't know.

20 Q. You didn't keep it hidden from him, did you?

21 A. I didn't go up and tell him I did.

22 Q. Do you know if Joe Meola did?

23 A. I don't know.

24 Q. Do you know if Frank Kelley told him, "Well,

1 we poured those drums in there"?

2 A. I don't know if he did.

3 Q. And did Mr. Shallin ask you, "Hey, did you
4 pour those drums in there?"

5 A. I don't know.

6 Q. Did you ever talk to Mr. Forte at any time
7 about your participating in the dumping of
8 waste material on the property of Grace at any
9 time?

10 A. Yes.

11 Q. When?

12 A. It was at a company dinner.

13 Q. When?

14 A. This year.

15 Q. All right.

16 And when was this company
17 dinner?

18 A. It was a Thursday night. I don't know the
19 date.

20 Q. Thursday night?

21 A. Yes.

22 Q. All right.

23 What time of year was it,
24 winter, fall?

1 A. No. It was this year.

2 Q. This year?

3 A. (Witness nodded affirmatively.)

4 Q. All right.

5 Was it January, February,
6 March, April, May?

7 A. Around that time. It was a business meeting.

8 Q. Well, which month?

9 A. March. April.

10 Q. You had a conversation with Mr. Forte?

11 A. (Witness nodded affirmatively.)

12 Q. How did the conversation take place?

13 MR. CHEESEMAN: Can we take a
14 break?

15 [Whereupon, a brief recess was
16 taken.]

17 [Whereupon, Mr. Segal and Mr.
18 Cheeseman left the room.]

19 MR. SEGAL: Tom, could you come
20 out?

21 [Whereupon, Mr. Barbas left the
22 room with Mr. Segal and Mr.
23 Cheeseman.]

24 BY MR. SCHLICTMANN;

1 Q. So, tell me about that conversation with Mr.
2 Forte?

3 A. He asked me if I knew anything about the
4 dumping, and at that time I didn't remember
5 anything, and I told him that.

6 Q. When he said "the dumping", did he explain it
7 any differently than that?

8 A. No.

9 Q. He just said, "Do you know anything about the
10 dumping?"

11 A. He said, "Do you know anything about dumping
12 waste out there?", I said, "I don't remember
13 anything about it." So, that's all.

14 Q. That's it?

15 A. We talked about other matters.

16 Q. Okay.

17 Did you have any conversation
18 with Mr. Orazine at any time about what Mr.
19 Orazine knew about any dumping that took place
20 on the property?

21 A. No.

22 Q. Did you ever make the statement to anybody
23 that Ed Orazine would tell me everything he
24 wanted to know?

1 MR. SEGAL: I don't understand
2 the statement. Could you read the question
3 again?

4 BY MR. SCHLICHTMANN:

5 Q. Okay. It's very open and very clear, and Mr.
6 Barbas, did you ever at any time ever tell
7 anybody that "Ed Orazine would tell me" --

8 A. Me?

9 Q. -- tell me, Jan Schlichtmann, "anything that I
10 wanted to hear or everything that I wanted to
11 hear"?

12 A. No.

13 Q. And did you ever make a statement to anybody
14 to indicate that Ed Orazine, if he came to a
15 deposition, would give a lot of information
16 that the plaintiffs were interested in
17 hearing?

18 A. No.

19 Q. Never said that?

20 A. I can't remember ever saying anything like
21 that.

22 Q. You never indicated that to anybody?

23 A. No.

24 Q. Did you ever have a conversation with Mr.

1 Orazine at any time about dumping of waste out
2 in the back?

3 A. No.

4 Q. Do you know if Mr. Orazine ever participated
5 in any dumping?

6 A. I don't know that.

7 Q. You have no reason to believe that Mr. Orazine
8 participated in the dumping of drums or the
9 burying of drums to the rear of the property?

10 A. I have no reason to believe that.

11 Q. Have you ever heard any rumors to that effect?

12 A. No.

13 Q. Do you have any reason to believe that --

14 MR. SEGAL: We already have
15 some testimony on that gentleman.

16 MR. SCHLICTMANN: Yes.

17 BY MR. SCHLICTMANN:

18 Q. Do you have any reason to believe that Mr.
19 Kelley was involved in any other incident with
20 -- the dumping of drums or burying of drums to
21 the rear of the plant?

22 A. I have no reason to believe that.

23 Q. None at all?

24 A. I have no reason to believe it. It doesn't

1 mean that it could have or it could not have
2 happened. I don't know.

3 Q. Did you ever hear Mr. Kelley say anything to
4 you that indicated to you that he had
5 information about where drums may have been
6 poured or buried on the Grace property?

7 A. Say that one again?

8 Q. Do you have any --

9 At any time did Frank Kelley
10 ever indicate to you that he had information
11 about the pouring of drums to the rear of the
12 plant or the burying of drums to the rear of
13 the plant?

14 A. No, he never made an indication to me.

15 Q. You never overheard Mr. Kelley joking about
16 the burying of drums to the rear of the plant?

17 MR. CHEESEMAN: Who never
18 heard?

19 MR. SCHLICTMANN: You.

20 THE WITNESS: He's talking
21 about me.

22 A. He never did.

23 Q. Mr. Kelley never made any jokes about it?

24 No.

1 Q. He never said he had any information about the
2 pouring of drums to the rear of the plant?

3 A. No.

4 Q. He never said anything that the company should
5 have buried the barrels in the pit or burying
6 the drums?

7 A. He never said anything to me.

8 Q. You have no reason to believe from whatever
9 source, whether it's a rumor or hearsay or
10 whatever, that Mr. Kelley had any information
11 concerning the dumping of material from drums
12 or the burying of drums to the rear of the
13 plant --

14 MR. SEGAL: Wait a minute.

15 BY MR. SCHLICHTMANN:

16 Q. -- other than the event that you and Mr.
17 Kelley participated in?

18 A. Yes. I have no reason to believe.

19 Q. Now, did Mr. Orazine ever indicate to you in
20 any way that he had information about the
21 burying or the pouring of drums to the rear of
22 the plant?

23 [Whereupon, the witness
24 conferred with Mr. Segal.]

1 MR. SEGAL: Let me have the
2 question read back, please.

3 [Whereupon, the last question
4 was read aloud as recorded by
5 the Court Reporter.]

6 A. The only thing Ed Orazine ever said to me was
7 after they dug up the drums -- I forget the
8 date -- he stated to me that they should never
9 have buried the drums. That's the only thing
10 he's ever said to me about it.

11 Q. Did you ask him about it?

12 A. No. I just walked away. I didn't want to
13 hear anything more about it.

14 Q. Why?

15 A. Because I was disgusted.

16 Q. Why were you disgusted?

17 A. Because I didn't think that anybody would bury
18 any drums out there.

19 Q. Did you think burying drums was bad?

20 A. I think it was.

21 Q. Was it worse than pouring drums into a pit?

22 A. Well, at the time that we poured the drums
23 into the pit, we believed that they weren't
24 hazardous.

1 Q. Do you think that burying drums is more
2 hazardous than pouring waste material into a
3 waste pit?

4 A. I believe that was done unintentionally.

5 Q. The pouring was done unintentionally?

6 A. Yes.

7 Q. How about the burying of drums?

8 MR. SEGAL: Well, he doesn't
9 even know if drums were buried.

10 MR. SCHLICTMANN: I'm asking
11 for his opinion.

12 A. My opinion?

13 Q. Yes. You were disgusted that they had buried
14 drums in the pit?

15 A. I was surprised to see drums come out of the
16 ground.

17 Q. You said you were disgusted?

18 A. I should have said "surprised", because I know
19 that, you know, I was irresponsible for that.

20 Q. You were irresponsible for burying drums?

21 A. Right.

22 Q. But you were surprised that drums came out?

23 A. Right.

24 Q. But you weren't disgusted about the fact that

1 people buried drums on the property?

2 A. It just surprised me.

3 Q. Surprised you?

4 A. Yes.

5 Q. Surprised, because why? Because you didn't
6 have any information about it?

7 A. I didn't know anything about it.

8 Q. Did you ask people about it? When you saw the
9 drums coming out, did you talk to people,
10 "Where did those come from? Who put them
11 there?"

12 A. Nobody knew.

13 Q. Nobody knew?

14 A. Nobody knew, and nobody had anything to say
15 about it.

16 Q. No information?

17 A. Just what Ed Orazine said, they should have
18 never buried the drums.

19 Q. But in talking to the employees, you never
20 heard from an employee or in conversation with
21 employees never found out where the drums came
22 from or who buried them there?

23 A. Never.

24 Q. Nobody knows anything about them?

1 MR. SEGAL: Well, that's not
2 fair.

3 BY MR. SCHLICHTMANN:

4 Q. To your knowledge.

5 A. To my knowledge?

6 Q. To your knowledge.

7 A. To my knowledge, I have never heard anybody
8 say anything about it.

9 Q. No reason to believe that Mr. Shallin has any
10 information about the burying of the drums to
11 the rear of the plant?

12 A. That's a hard question to answer.

13 Q. Why is it hard?

14 A. Because I don't know what he knows and what he
15 doesn't know.

16 MR. SEGAL: What he's saying in
17 a left-handed way, did Shallin ever indicate
18 to you anything that would indicate he knew
19 about the burying of the drums? Or did
20 anybody else ever indicate something to you
21 that would lead you to believe Shallin felt
22 the drums had been buried?

23 A. No. I never had that impression.

24 Q. Never had that impression?

1 A. No.

2 Q. And you never talked to anybody, gave you any
3 information at all as to where the drums came
4 from and who buried them?

5 A. No.

6 Q. Do you have reason to believe that there is a
7 person working at the Grace plant right now
8 who has information concerning who buried
9 those drums?

10 A. Do I believe there's a person there?

11 Q. Yes.

12 A. There could be. I don't know.

13 Q. But you don't know who that person could
14 possibly be?

15 A. No, I don't.

16 Q. You have no reason to believe Frank Kelley was
17 involved in the burying of the drums?

18 A. He could have.

19 Q. Why do you say "he could have"?

20 A. Maybe he did, and maybe he didn't. I don't
21 know. I don't know anybody that knows
22 anything about it.

23 Q. Nobody ever mentioned anything to you?

24 A. No.

1 Q. You heard no rumors at all?

2 A. I never heard any rumors about what?

3 Q. About anybody burying the drums.

4 A. No.

5 Q. Had you heard any rumors at all about anybody
6 burying drums in the property?

7 A. Yes.

8 Q. What have you heard?

9 A. A phone call that I got one Sunday night from
10 Bog Pasquariella.

11 Q. Other than the phone call from Mr.
12 Pasquariella, have you ever heard from anybody
13 the rumor that drums had been buried to the
14 rear of the plant?

15 A. Never.

16 Q. That came as a big surprise to you, when Mr.
17 Pasquariella talked to you?

18 A. Very big surprise.

19 Q. You've checked your memory?

20 A. I've checked it, and all is well.

21 Q. Okay.

22 Now, Mr. Barbas, you know Steve
23 Lieberman; right?

24 A. Yes.

1 Q. You know he was an employee at the plant?

2 A. Yes.

3 Q. You know he worked at the plant from 1977 till
4 last year?

5 A. Yes.

6 Q. And, Mr. Barbas, at any time did Mr. Lieberman
7 ever assist you in pouring waste, sludge or
8 waste liquid into the trench to the rear of
9 the plant?

10 MR. CHEESEMAN: Which trench,
11 now, are you referring to?

12 MR. SCHLICTMANN: Any trench.

13 MR. SEGAL: Well, wait a
14 minute.

15 BY MR. SCHLICTMANN:

16 Q. Did Mr. Lieberman ever assist you in the
17 pouring of waste liquid to the rear of the
18 plant at any time?

19 A. It's don't think so. I can't remember that
20 happening.

21 Q. You can't remember that happening?

22 A. No, I can't.

23 Q. And between 1977 and 1984, at no time did you
24 ever -- you remember ever pouring waste

1 material onto the ground or in a trench or in
2 a pit on the Grace property?

3 MR. SEGAL: Wait a minute.
4 You've already talked about it. I'm sorry.
5 '77.

6 BY MR. SCHLICTMANN:

7 Q. '77 to last year?

8 A. '77 to '79?

9 Q. No, till '84?

10 MR. SEGAL: The last seven
11 years.

12 BY MR. SCHLICTMANN:

13 Q. Did you ever?

14 A. Yes.

15 Q. You did? When?

16 MR. SEGAL: Did he ever what?

17 Let's be sure we know what the question is.

18 BY MR. SCHLICTMANN:

19 Q. From 1977 till last year did you at any time
20 pour waste liquid or waste material on the
21 ground, in a trench, or in a pit to the rear
22 of the Grace property, or in any part of the
23 Grace property?

24 A. Yes, on the Grace property.

1 Q. When?

2 A. Waste, paint sludge.

3 Q. When?

4 A. Probably 1977. Around that time.

5 Q. Until when?

6 A. Maybe until '79 when the pea stone was put
7 down.

8 Q. All right.

9 Now, the pea stone was put down
10 in the area where you used to dump paint
11 sludge?

12 A. Yes.

13 Q. Why was the pea stone put down there, if you
14 know, in that area?

15 A. They were -- I believe they were going to put
16 a large metal dumpster for placing wooden
17 objects on it, like crates, so somebody could
18 come and take it. They couldn't put that on
19 the regular ground because the metal wheels
20 used to sink in.

21 Q. Right.

22 So, when they put the pea stone
23 down, they put that down in 1979 --

24 A. I believe '79.

1 Q. -- all the dumping stopped?

2 A. Yes.

3 Q. Who told you to stop the dumping?

4 A. I believe it was Paul Shallin, Ulf Nordin.

5 Q. Told you to stop it?

6 A. Yes.

7 Q. He came to you, and what did he say?

8 A. He said, "We're going to try to clean up the
9 area, no more dumping." Not just me,
10 everybody.

11 Q. Who else did he talk to, do you know?

12 A. I don't know.

13 Q. Now, did this happen after they closed the
14 wells down, wells G and H in 1979?

15 A. I don't know that.

16 MR. CHEESEMAN: I don't know if
17 this witness is competent to testify when
18 wells G and H was shut down BY MR.

19 SCHLICHTMANN:

20 Q. Well, the wells were shut down in 1979; are
21 you aware of that?

22 MR. SEGAL: Why don't you ask
23 simply, did the conversation with either
24 Shallin or Nodin, where they said to you,

1 "Stop dumping out back" take place in May of
2 1979; do you know? Can you pin it down?

3 THE WITNESS: No, I can't pin
4 it down.

5 BY MR. SCHLICHTMANN:

6 Q. Well, did this happen in the summer of 1979?

7 A. I can't be specific on the date.

8 Q. All right.

9 You remember it was 1979?

10 A. That sticks in my mind.

11 Q. Well, what time of year did they put the pea
12 stone down?

13 A. It was not winter.

14 Q. Was it the fall?

15 A. Could have been the fall or the summer. It
16 wasn't winter.

17 Q. Spring, summer or fall?

18 A. Yes.

19 Q. You remember the wells were closed down in May
20 of '79, or do you not remember that?

21 A. I remember something about it.

22 Q. You remember the spring of 1979 the wells were
23 closed down; you remember that?

24 MR. CHEESEMAN: Do you remember

1 the date?

2 THE WITNESS: I don't remember
3 the date.

4 BY MR. SCHLICTMANN:

5 Q. Well, do you remember it was in the spring
6 season of 1979; does that sound right to you?

7 A. I remember 1979; I don't know if it was the
8 spring.

9 Q. You remember reading about it in the paper?

10 A. Yes.

11 Q. You remember reading that the wells were
12 contaminated and they were closed down?

13 A. Yes.

14 Q. Did you understand they were contaminated with
15 solvents?

16 A. I don't know if they were contaminated with
17 solvents, I know they were just closed down.

18 Q. Because they were contaminated?

19 A. Yes.

20 Q. You remember becoming aware of that; you read
21 it in the paper?

22 A. Yes.

23 Q. Now, I'm asking you, did they put the pea
24 stone down on that area after you remember

1 hearing that the wells were closed down?

2 A. I don't remember that.

3 Q. Do you think it was the same time?

4 A. I don't remember that.

5 Q. Well, what's your best memory?

6 A. 1979. It was around -- yeah, 1979.

7 Q. Around 1979?

8 A. (Witness nodded affirmatively.)

9 Q. If you had to pick a season to put the pea
10 stone down, what season would you pick?

11 MR. CHEESEMAN: If you have
12 any --

13 A. I couldn't pick a season.

14 Q. You know it wasn't the winter?

15 A. I know it wasn't the winter.

16 Q. So it had to be the spring, summer and fall?

17 A. Right.

18 Q. So, if you had to pick from those three, what
19 would you pick?

20 A. I can't.

21 Q. Do you remember discussing with Mr. Shallin
22 that they had closed the wells down?

23 A. No. I don't remember.

24 Q. I'm going to show you Stewart Exhibit No. 1

1 and ask you to examine that, and you'll see a
2 red X on that exhibit.

3 [Whereupon, the photograph was
4 tendered to the witness for
5 examination.]

6 [Pause.]

7 BY MR. SCHLICTMANN:

8 Q. You see a red X in Stewart Exhibit 1?

9 A. Yes.

10 Q. In looking at that photograph with the red X,
11 do you know -- and thinking back in your
12 memory and looking at that photograph, do you
13 have any reason to believe that waste liquid
14 or drums were buried or poured in that area
15 where the X is?

16 A. Do I have any reason to believe?

17 Q. Yes. Yes.

18 A. No.

19 Q. All right.

20 Is that red X on the
21 photograph, that's not where you poured your
22 drums into a pit?

23 A. I believe that's not the area.

24 Q. You believe it's not the area?

1 A. Yes.

2 Q. And the reason you believe it's not the area?

3 A. It's too far away from the building.

4 Q. The building you're referring to is the
5 warehouse?

6 A. Yes.

7 Q. Is that right?

8 A. Yes.

9 Q. All right.

10 Now, in looking at Barbas
11 Exhibit No. 3, I want you to look at the
12 northeast corner of the second addition.

13 A. That's this? (Indicating.)

14 Q. Yes.

15 Q. At any time after the second addition was
16 built, do you ever remember that drums were
17 stored inside the fence in that area?

18 A. I don't remember that.

19 Q. You never remember seeing any drums there?

20 A. No.

21 Q. At any time that you were present at the Grace
22 plant, did you ever recall ever seeing drums
23 inside the fenced area in the northeast corner
24 of the building of the main building, first

1 addition or the second addition?

2 A. Inside the fence?

3 Q. Inside the fence.

4 A. I don't remember that.

5 Q. Do you ever remember being at the Grace plant
6 where you observed drums being stored in the
7 northeast corner of the main building, the
8 first addition or the second addition where
9 drums were kept in around that area?

10 A. No, I don't remember that.

11 Q. Whether inside the fence or outside the fence?

12 A. Not this area, no.

13 Q. All right.

14 The place where you saw drums
15 being stored was always -- during the time you
16 were associated with the plant, was always
17 over to the warehouse side of the main
18 building, first addition or second addition?

19 A. Yes.

20 Q. Is that right?

21 A. Yes.

22 Q. You never saw drums stored on the other end?

23 A. I don't remember anything being on the other
24 side.

1 Q. And the amount of drums that you saw being
2 stored on the warehouse side of the building
3 was approximately up to 10 to 20 drums?

4 A. Yes.

5 Q. You never saw any drums, to your knowledge,
6 being stored on the other side of the building
7 away from the warehouse?

8 A. Not to the best of my knowledge, I don't
9 remember any on the other side.

10 Q. Whether inside the fenced-in area or outside
11 the fenced-in area?

12 A. Right.

13 Q. Now, after you disposed of the drums in the
14 pit --

15 A. Wait a minute. Disposed of the drums?

16 Q. I'm sorry, poured the material of the drums
17 into the pit, you said you had a conversation
18 with Mr. Shallin, you were surprised that he
19 asked you to pour them into there because you
20 thought they were going to be carried away,
21 carted away?

22 A. Right.

23 MR. CHEESEMAN: That was a
24 conversation before he poured them in?

1 THE WITNES: Yes.

2 BY MR. SCHLICTMANN:

3 Q. After you poured the drums into the pit you
4 continued to place drums containing waste
5 liquid to the rear of the plant; isn't that
6 right?

7 A. Yes.

8 Q. All right.

9 And you continued to put them
10 on which side of the building; on the
11 warehouse side of the building or on the
12 opposite side?

13 A. The warehouse side.

14 Q. And you continued to store them there?

15 A. Yes.

16 Q. All right.

17 And they weren't carted away,
18 were they?

19 A. No, sir.

20 Q. Were they poured on the ground?

21 A. No.

22 Q. How do you know that?

23 A. You said carted away. What do you mean by
24 "carted away"?

- 1 Q. Taken away.
- 2 A. To the best of my knowledge, they were taken
3 away by a legal disposal frim Axton-Cross.
- 4 Q. After you poured the drums into the pit?
- 5 A. After that first initial pouring.
- 6 Q. From then on?
- 7 A. From then on, the drums were stored somewhere
8 in that area --
- 9 Q. By the warehouse?
- 10 A. -- by the warehouse. They were tested, and
11 they were sent out for disposal by
12 Axton-Cross.
- 13 Q. Now, how soon after you poured the drums into
14 the pit did Axton-Cross, to your knowledge,
15 start taking away these drums that were being
16 brought to the rear of the plant by yourself?
- 17 A. I have no recollection of the exact date. I
18 know that they did come.
- 19 Q. I understand. Was it within a month?
- 20 A. No.
- 21 Q. Was it within a year?
- 22 A. I'd say a couple of years.
- 23 Q. Within two years?
- 24 A. Maybe longer.

1 Q. Okay.

2 How much longer than two years?

3 A. The only recollection that I have of the first
4 time when they came was 1981.

5 Q. 1981?

6 A. 1981.

7 Q. So, if you remember Axton-Cross coming in 1981
8 and they're the company that was hired to take
9 away these drums in 1981, you have no
10 knowledge of their coming before 1981; is that
11 right?

12 A. They could have, but '81 sticks in my mind.

13 Q. '81 does?

14 A. Yes.

15 Q. Why does it stick in your mind?

16 A. Because at that time we were always testing
17 the barrels, sending out the contents for
18 analysis by the laboratory at Axton-Cross, and
19 the drums were accumulating.

20 Q. And you did that in 1981?

21 A. No. We did that from 1974 after the pouring,
22 and I believe the only time I can remember --
23 the first time I remember them coming was
24 1981.

1 Q. All right.

2 Are you saying, Mr. Barbas,
3 that in 1974 you remember pouring the drums
4 into that pit, 1974?

5 A. Right.

6 Q. You remember immediately pouring the drums --
7 the practice was to store the drums to the
8 rear of the plant and to test them?

9 A. I'm not sure of the exact location. I believe
10 it to be the rear of the plant; I'm not sure.

11 Q. Did you do testing of those drums?

12 A. Yes.

13 Q. Okay.

14 And when did you start testing
15 those drums?

16 A. Whenever there was a couple of drums out
17 there. We would put a pipe inside the drums,
18 take out a sample of the liquid, put it inside
19 a plastic container and send it to the lab at
20 Axton-Cross for their --

21 Q. Analysis?

22 A. Analysis.

23 Q. And what was the results of their analysis?

24 A. The analysis was when we had a big enough

1 load, they would come and take them. They
2 wouldn't come for one at a time; you had to
3 have a lot.

4 Q. How much would you have to have?

5 A. I would say four or five.

6 Q. So, in 1974 you poured the drums into the pit
7 and those drums disappeared?

8 A. Right.

9 Q. And then you started accumulating more drums
10 to the rear of the plant, right?

11 A. Yes.

12 Q. Because you used to put them out there?

13 A. Yes.

14 Q. And you used to put them out there on a
15 regular basis?

16 MR. SEGAAL: Let me clear
17 something up. You said the drums
18 disappeared. I got the impression that the
19 drums were put back near the fence.

20 THE WITNESS: The empty ones.

21 BY MR. SCHLICTMANN:

22 Q. And nobody knows where they went?

23 A. Right.

24 Q. Disappeared.

C E R T I F I C A T E

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I, THOMAS BARBAS, do hereby certify that I have read the foregoing transcript of my testimony, and further certify that said transcript is a true and accurate record of said testimony.

Dated at _____, this _____ day of _____, 1985.

THOMAS BARBAS

Read and subscribed to before me on this day of _____, 1985.

Notary Public

My Commission expires:

1 COMMONWEALTH OF MASSACHUSETTS

2 SUFFOLK, SS.

3
4 I, Maureen Manzi, a Massachu-
5 setts Certified Shorthand Reporter and Notary
6 Public duly commissioned and qualified in and
7 for the Commonwealth of Massachusetts, do
8 hereby certify that there came before me on
9 the 27th day of June, 1985, at 10:25 a.m., the
10 person hereinbefore named, who was by me duly
11 sworn to testify to the truth and nothing but
12 the truth of his knowledge touching and
13 concerning the matters in controversy in this
14 cause; that he was thereupon examined upon his
15 oath, and his examination reduced to
16 typewriting under my direction; and that the
17 deposition is a true record of the testimony
18 given by the witness.

19 I further certify that I am
20 neither attorney or counsel for, nor related
21 to or employed by, any of the parties to the
22 action in which this deposition is taken, and
23 further that I am not a relative or employee
24 of any attorney or counsel employed by the

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parties hereto or financially interested in
the action.

IN WITNESS WHEREOF, I have
hereunto set my hand and affixed my notarial
seal this 15th day of July, 1985.

My Commission expires
March 5, 1987.

Maureen Manzi
Maureen Manzi
Certified Shorthand Reporter
and Notary Public